

Thematic Legal Study on impact of the
Race Equality Directive

National Report for Cyprus

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Executive Summary

Overview

- [1]. An overview of national legislation in the anti-discrimination field is attempted in the first section, describing relevant provisions of the Cypriot Constitution, laws ratifying relevant international conventions, labour law provisions prohibiting discrimination, criminal law provisions on racist acts and finally the laws transposing the Race Equality Directive and the Employment Framework Directive. Particular reference is made to the appointment of the specialised body and its mandate which extends beyond the minimum requirements of Article 13 of the Race Equality Directive.
- [2]. The areas of concern of the Third ECRI Country Report on Cyprus are presented in this section, together with ECRI' s findings that awareness of the new anti-discrimination legislative framework remains low, whilst the resources allocated to the Equality Body are inadequate.
- [3]. There are no public debates on the effectiveness of the laws transposing the Race Equality Directive. On the contrary, at the level of public debate there is an apparent reluctance to classify incidents as racist and a 'denial' that racism exists in Cyprus. As a result, no cases have ever been adjudicated by any Cypriot Court invoking the laws transposing the Race Equality Directive.
- [4]. The process of revising laws, regulations and practices containing discriminatory provisions is identified as one of the gaps of national legislation compared to the minimum requirements of the Race Equality Directive, as it is only triggered off when a complaint is submitted to the equality body and even in those cases the revision of the law or regulation does not proceed. Moreover, the measures taken for the promotion of dialogue with social partners and NGOs and the obligation to raise awareness on the anti-discrimination acquis appear to be lacking, particularly as the vulnerable groups were not targeted in the few awareness activities which took place.
- [5]. The extended mandate of the Equality Body is cited as the national feature going beyond the minimum requirements of the Race Equality Directive.

Equality Body

- [6]. This section offers an insight into the process of and rationale behind the appointment of the Ombudsman as national equality body and the essential logic that permeates the former and affecting the latter institution, the correlation between the two institutions. The mandate, budget, staffing, independence, powers, advising role, methodology in monitoring instances of discrimination and the limitations of the Equality Body are discussed in this section. Also, the Body's reporting system and manner of compilation of statistics are described and two opinion surveys showing the perceptions of the Greek Cypriots towards other groups are set out. Reference is also made to the wide mandate of the Equality Body which extends beyond the minimum requirements of Article 13 of the Race Equality Directive, to cover the fields of application of the Employment Framework Directive as well as rights guaranteed under international law.

Assistance

- [7]. With regard to the right of associations to engage in proceedings on behalf of victims and although the minimum requirements under Article 7/2 of the Race Equality Directive have been met, this provision has not been used by any organisation so far in order to offer Court representation to victims. It should be noted that although complaints are regularly submitted to the Equality Body from NGOs acting on behalf of victims, there is no NGO able to offer Court representation in Cyprus.

Social Partners

- [8]. The laws transposing the Race Equality Directive have made it possible for trade unions to represent their members in administrative or judicial proceedings, however this opportunity has not been taken up yet by the trade unions who, like the NGOs, do not have the capacity to offer Court representation to their members.
- [9]. The section notes the reluctance of trade unions to engage in activities outside their strict labour relations mandate and describes the trade unions' cooperation with NGOs that led to a number of awareness raising activities under EU funded projects.
- [10]. Finally this section addressed the question of indirect discrimination in collective agreements in sectors operated exclusively by migrants.

Sanctions, Compensation, Mediation and Legal Consequences

- [11]. The procedures for claiming compensation are set out in this section, as well as the fines and other penalties which may be imposed by the Court and by the Equality Body respectively. It is noted that so far there is no Court decision invoking the laws transposing the Race Equality Directive and, although there are several Equality Body reports, no fine or other sanction was ever imposed. The fines which may be imposed by the Equality Body are, in any case, so small that they can hardly operate as a deterrent. In the same vein, the impact of the principle of reversing the burden of proof cannot be evaluated given that it was never tested on the ground.
- [12]. The mediation procedures which the Equality Body regularly employs are intended to eliminate an unlawful practice and not to compensate the victim, which falls outside the mandate of the Equality Body. In order to claim compensation, a victim must apply to the Court.

Rights Awareness

- [13]. There are no surveys investigating the degree of public awareness of the anti-discrimination laws. Reference is made, however, to a survey commissioned by the Equality Body in 2007 on the perceptions of the Greek Cypriots regarding persons of other religions, where the question of awareness was *inter alia* posed.

Analysis of Deficiencies

- [14]. The ever-present “Cyprus problem” has created a legacy that renders the establishment of a human rights and anti-racist mentality very difficult. Also, the suspension of the constitutional rights of Turkish Cypriots under the so called “doctrine of necessity” creates a problematic situation that needs to be addressed.
- [15]. The most important gap in the law relates to the process of revision of laws and regulations containing discriminatory practices is discussed in this section, together with a number of other deficiencies limiting the impact of the anti-discrimination laws, including the absence of dialogue with trade unions and NGOs, the limited resources afforded to the Equality Body, the weakness of the sanctions which the Equality Body can impose, the lack of public funding for anti-discrimination NGOs; low awareness of the anti-discrimination laws leading to the non-utilisation of the option of litigation, the failure of the authorities to address the rise of the far right in Cyprus and the reluctance to recognise the existence of racism and the reluctance of the Equality Body to take a more active stand against the discriminatory treatment of Turkish Cypriots.

Good Practice

- [16]. The legal precedent created by a Supreme Court decision that constitutional rights are actionable per se paves the way for legal action against the state as well as against persons in the private sector based on the anti-discrimination provision of the Cypriot Constitution. Furthermore, the extended mandate of the Equality Body, discussed throughout this report, has led to significant interventions of the Equality Body in areas of concern regarding racism, such as asylum and immigration.

Miscellaneous

- [17]. A Supreme Court decision which has essentially frozen applications for the status of the long term resident is discussed against the backdrop of immigration department practices.

1. Overview

- [18]. Prior to the transposition of the Race Equality Directive, the national framework embodying the principle of equal treatment and the combating of discrimination on the basis of racial/ethnic origin, nationality and religious belief, was based on Constitutional, European and International law. Article 28(1) of the Cypriot Constitution, which corresponds to Article 14 of the ECHR, states: "All persons are equal before the law, the administration and justice, and are entitled to equal protection thereof and treatment thereby." Article 28(2) of the Cypriot Constitution guarantees the enjoyment of economic, social and cultural rights by all persons without discrimination and provides that every person shall enjoy all the rights and liberties provided for in the Constitution without any direct or indirect discrimination against any person on the grounds of: community; race; religion; language; sex; political or other conviction; national or social descent; birth; colour; wealth; social class; or any ground whatsoever, unless the Constitution itself otherwise provides. Therefore this provision has a more far-reaching application than the Race Equality Directive. In 2002 a Supreme court decision ruled that all constitutional and other rights that are

constitutionally guaranteed are directly and indirectly applicable in the private and public sphere.¹

- [19]. Article 30 of Part II of the Constitution guarantees the right of access to the Courts as one of the fundamental rights and liberties. This is afforded to everyone, non-citizens and citizens alike and irrespective of which community or religious group they belong to, i.e. irrespective of whether s/he is Greek-Cypriot, Turkish-Cypriot, Maronite, Armenian or Latin. Article 6 provides that no law or decision of the House of Representatives or of any of the Communal Chambers (no longer active), and no act or decision of any organ, authority or person in the Republic exercising executive power or administrative functions, shall discriminate against any of the two “Communities” or any person by virtue of being a member of a “Community”. The term “Community” is used in the Constitution is meaning either the Greek or the Turkish Community of Cyprus.
- [20]. In July 2006, the Cypriot Constitution was amended to give supremacy to EU laws. The amendment which had been at the centre of political debates for two years prior to its enactment, adds a new article to the Constitution providing that nothing therein stated shall nullify laws, acts or measures rendered necessary as a result of Cyprus’ obligations as an EU member state, or to prevent Regulations or Directives or other binding legal measures enacted by the EU or its bodies from having force in Cyprus. This development is significant vis-à-vis the national anti-discrimination legislative framework because, prior to its enactment, the anti-discrimination provision of Article 28 of the Cypriot Constitution was interpreted by the Courts to mean that any positive measures taken in favour of vulnerable groups were violating the principle of equality enshrined in the Constitution. The new amendment renders the positive measure provisions of EU directives superior to the Constitution and thus unchallengeable on the basis of Article 28.
- [21]. The most relevant International and European instruments signed and ratified by Cyprus are the Convention on the Elimination of All Forms of Racial Discrimination; ILO Convention No. 111 on Discrimination; the European Convention on Human Rights including its Protocol 12. Although Cyprus has ratified the Convention on the Protection of Minorities, it does not recognise any group as a ‘minority’: Turkish Cypriots and Greek Cypriots are ‘communities’; Armenians, Latins and Maronites are ‘religious groups’ and the Roma are considered as part of the Turkish Cypriot community. . In 2006 the law ratifying the Additional Protocol to

¹ *Yiallourou v. Evgenios Nicolaou* (2001), Supreme court case, Appeal No. 9331, 08.05.2001.

the Convention on Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems² came into force which created new offences in the field of combating discrimination such as holocaust denial and dissemination of racist material through the internet.

[22]. With the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination,³ as well as with the subsequent amendments introduced to the basic law,⁴ Cyprus established a number of offences relevant to combating racism and intolerance, in conformity with a recommendation of the Committee for the Elimination of Racial Discrimination. The offences include incitement to racial hatred, participation in organisations promoting racial discrimination, public expression of racially insulting ideas and discriminatory refusal to provide goods and services

[23]. The Cypriot Criminal Code (Cap.154) criminalises the following discriminatory acts:

- Publication with a seditious intention (Article 47)
- Intention to promote feelings of ill will and hostility between different communities or classes of the population of the Republic⁵ (Article 48)
- The calculated statement, printed or published to “encourage recourse to violence on the part of any of the inhabitants or to “encourage recourse to violence or promote feelings of ill will between different classes of communities or persons in the Republic of Cyprus” or which “procures the inhabitants to acts of violence against each other or to mutual discord or foments the creation of a spirit of intolerance” (Articles 51 and 51A).
- The destruction, damaging or defiling of any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion (Article 138).

² Cyprus/The Additional Protocol to the Convention against Cybercrime concerning the Criminalisation of Acts of Racist or Xenophobic Nature committed through Computer Systems (Ratification) Law N. 26(III)/2004.

³ Cyprus/The Convention on the Elimination of All Forms of Discrimination (Ratification) Law, N. 12/1967.

⁴ Cyprus/ Laws amending the Convention on the Elimination of All Forms of Discrimination (Ratification) Law, No. 11(III)/1992 and 28(III)/1999

⁵ This is deemed to be seditious intention for the purposes of the above offence under article 47.

- The publication of a book or pamphlet or any article or letter in a newspaper or magazine which is perceived by a group of people as a public insult to their religion, with intent to ridicule such religion or to shock or insult its followers. Prosecution based on this provision can be instigated only by the Attorney-General or with his consent (Article 142).
- The uttering of any word or the making of any sounds with the deliberate intention of wounding the religious feelings of any person in the hearing of that person, or any gesture in the sight of that person, or the placing of an object in the sight of that person (Article 149).

[24]. In the area of employment, the Law on Termination of Employment No. 24/1967 renders dismissal on grounds such as race, colour, family condition, religion, political opinion, national origin or social descent 'unfair' and therefore actionable.

[25]. On 01.05.2004 three laws came into force purporting to transpose the Race Equality Directive: (a). The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law⁶ purporting to discharge of the Republic's obligation to appoint a national Equality Body under Article 13 of the Race Directive (hereinafter Law No. 42(1)); (b) The Equal Treatment (Racial or Ethnic Origin) Law⁷ purporting to transpose the component of the Race Equality Directive dealing with fields beyond employment (social protection, health care, social provision, education and access to goods and services); and (c) The Equal Treatment in Employment and Occupation Law⁸ purporting to transpose, inter alia, the employment component of the Race Equality Directive.

[26]. In compliance with Article 13 of the Race Equality Directive, a law came into force upon Cyprus' accession to the EU appointing the Ombudsman as the national equality body.⁹ Under this law, the equality body empowered to (i) combat racist and indirectly racist discrimination as well as discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or

⁶ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004)

⁷ Cyprus/ The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I) /2004 (31.3.2004)

⁸ Cyprus / The Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004).

⁹ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004)

ethnic origin¹⁰; (ii) promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution (Part II) or by one or more of the Conventions ratified by Cyprus and referred to explicitly in the Law¹¹ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin¹² and (iii) promote equality of opportunity irrespective of the grounds listed above in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing. Overall, the role of the Equality body is to deal with all grounds provided for by the Directives as well as other grounds provided for in national law.

[27]. The *Third ECRI Report on Cyprus*,¹³ which was made available in April 2006,¹⁴ notes that in spite of the general institutional improvement provided by the robust anti-discrimination laws that derived from the harmonisation of Directives EC/2000/43 and EC/2000/78, many of areas of concern noted in the Second ECRI Report are still prevalent and there are some new areas of concern. These include:

- Reports that undocumented migrants and asylum seekers who try to enter or stay in Cyprus illegally have been subjected to excessive use of force by the police pointing out that three non-citizens have died in police custody (para.27).
- Reports that minority groups including tourists and Cypriot citizens have been affected by racial profiling practices or racist attitudes by border control officials (para.27).
- The “hostility and rejection by the local non-Roma population [towards the Roma] which is reported to be high and to have in some cases resulted in physical violence. In these cases, the racist dimension of the incidents has reportedly been played down or neglected” (para.25).

¹⁰ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 3.(1).(a), Part I.

¹¹ These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention Against Torture and Inhuman and Degrading Treatment or Punishment.

¹² Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Article 3(1).(b), Part I.

¹³ ECRI (2006), Third Report on Cyprus, Adopted on 16 December 2005, Strasbourg 16.05.2006, pp. 7-8.

¹⁴ Development Partnership: “Equality and Solidarity for Asylum Seekers - Guarantee For Employment and Freedom”

- Incidents of ill-treatment of asylum seekers by police, in many cases aimed at forcing them to withdraw their asylum applications so that they can be deported.
- Harassment of Turkish Cypriots by the police (para.24).
- ‘Manifestations of racism and discrimination affecting Turkish-Cypriots’ (para. 82).
- Indirect discrimination against non-EU workers “when collective agreements stipulate unreasonably disadvantageous conditions for sectors mainly operated by these workers” (para.71).
- The working conditions in the sectors of the farming and agriculture industry, which is almost entirely made up by migrant workers and are sectors open to the employment to asylum seekers, are ‘extremely poor’, with wages well below the minimum fixed by collective sectors of the economy.
- Artists in cabarets, night clubs and pubs are often victims of trafficking (para.111).

[28]. The Third ECRI report on Cyprus states that awareness of the legal framework against discrimination among the legal community and the general public is still very limited and calls on the Cypriot authorities to take steps to improve awareness of the provisions against racial discrimination among the legal community and the public. ECRI also criticised the tight budget accorded to the Equality Body and stressed the need for adequate resources to be made available to it so to enable it to respond to its tasks.

[29]. There are few or no public debates on the anti-discrimination legislation, which continues to remain an unknown factor for many of the public figures involved in the debates. Reports of the equality body are regularly appearing in the press, however it is usually the events that led to the complaint or the self initiated investigation that attract media attention and not the law regulating the area in question. In addition, because the Equality Body is also the Ombudsman, an institution which Cypriots are far more familiar with, whenever the Equality Body makes public interventions in debates, these are often perceived as coming from the Ombudsman, rather than the specialised body created by the transposition of the EU acquis. Incidents of racial violence, particularly when the perpetrators were groups of youth, are regularly featured in the press and sometimes would even prompt a discussion in Parliament amongst MPs, the Equality Body and NGOs, but little attention is paid to the law or any gaps in legal protection. In fact there is a clear reluctance on behalf of the police, the legal service and policy makers to attribute racist motives to attacks which are manifestly racist, preferring to classify them as juvenile delinquency, a mentality strongly and repeatedly criticised by

the Equality Body.¹⁵ Due to this mentality, almost five years after the entry into force of the laws transposing the Race Equality Directive, no cases have been brought before the Courts invoking any of these laws. In this climate it is premature to talk about deficiencies of the laws since these have not been tested on the ground. In fact the one gap that can be detected at this stage is the absence of a provision forcing the police to prosecute offenders on racist related charges when the Equality Body finds that certain behaviour is manifestly racist.

[30]. The national laws enacted for the purpose of transposing the Race Equality Directive are now in compliance with the said Directive following amendments introduced in 2006 and 2007 pursuant to a warning from the European Commission.¹⁶ However:

- The duty to ensure that discriminatory laws and provision contained in contracts, collective agreements, internal rules of undertakings or rules governing independent occupations and professions and workers and employers' organizations have been explicitly repealed¹⁷ by way of a general provision in the two main anti-discrimination laws¹⁸ has not been fully complied with. No review of the existing laws was made to ensure compliance with the Directives. Practice suggests that the process of formal repeal of older laws which do not comply with the Directives is somehow

¹⁵ In a self initiated investigation under ref. AKP/AYT 2/2008 dated 26.01.2009 the Equality Body examined the handling by the police of a racial attack against migrants and found that the police demonstrated reluctance in prosecuting the offenders for offences related to racial motive and in recording the event as a racial incident. In another case, the Equality Body investigated the racist attack against a black pupil by other pupils and criticised the refusal of the school authorities as well as the police to address and take measures against of racism (file no. AKP 241/2008, dated 10.03.2009).

¹⁶ On 24.11.2006, the Law on Equal Treatment (Racial or Ethnic Origin) Law N. 147(I)2006 was passed amending the law purporting to transpose the Race Equality Directive pursuant to a request from the European Commission, in order to comply with the Directive's provision regarding the reversal of the burden of proof. However, the said amendment fell short from satisfying the requirements of the Directive, because its scope did not include employment. Thus, a new law was passed in 2007 to remedy this situation. The new law amends the Equal Treatment in Employment and Occupation Law N.58(I)/2004, whose scope includes employment, vocational training, working conditions and participation in a trade union. The changes introduced by the new law are three: (a) the burden of proof is reversed not only in civil proceedings, as was the case with the old law, but in "every proceedings except criminal ones"; (b) the claimant no longer has to *prove* facts from which a violation can be inferred (as was the case with the old law), but merely to *introduce* such facts, upon which the burden of proof is automatically reversed; and (c) the accused is no longer absolved from liability if s/he proves that her/his violation had no negative impact on the claimant (as was the case with the old law).

¹⁷ As required by the Race Equality Directive, Article 14.

¹⁸ Article 16(1) The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31.3.2004) and Article 10(1) The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31.3.2004).

‘triggered off’ only after a complaint is submitted to the equality body. Even in that case, the process seems to come to a halt when it reaches the Attorney General’s office, who has not so far proceeded to the revision of any of the laws which the equality body referred to him for revision. There is no procedure for continuous reviewing of existing legislation for the purpose of assessing compatibility with the anti-discrimination directives.

- The equality body has the right to refer laws, regulations and practices containing discriminatory provisions to the Attorney General, who has an obligation to advise the competent Minister or the Council of Ministers of measures to be taken and prepare the corresponding law.¹⁹ Although some cases of discriminatory laws/regulations/practices have been referred by the equality body to the Attorney General, no change in any discriminatory law/regulation/ practice has resulted so far. Meanwhile, unless and until the discriminatory law/ regulation/ practice is expressly repealed by law, it continues to remain in force, in contravention article 14 of the Race Equality Directive. For example, several regulations requiring job applicants for public sector positions to have “excellent knowledge of Greek” continue to remain in force, in spite of equality body recommendations that they should be revised.
- Certain provisions of the Race Equality Directive which require the Member States to take measures other than the enactment of legislation, have not been fully implemented. These measures include the promotion of dialogue with social partners and NGOs²⁰ and the obligation to bring all anti-discrimination provisions to the attention of the persons concerned.²¹ Since the adoption of the legislation, which was rushed through Parliament on the eve of Cyprus’ accession to the EU, with the exception of a few seminars not specially targeting vulnerable groups, there has been little initiative or positive action taken by the Government or other public body. A small number of awareness raising publications issued by

¹⁹ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law N. 42(1)/ 2004, articles 39(1) and 39(3) respectively.

²⁰ The Race Equality Directive, Preamble paragraph 23. During the drafting of the various National Action Plans, the trade unions were consulted but were not informed as to which of their proposals were accepted or not, nor were any reasons given; they saw the final National Action Plans published. The only NGO dealing with racism and racial exclusion at the time (KISA) was not consulted in the formation of National Action Plans (for Employment, Social Inclusion, Education).

²¹ Employment Equality Directive, Article 12 and Race Equality Directive Article 10. Although Turkish is one of the two official languages of the Cyprus Republic, none of the new instruments (or indeed any of the old ones or even the Official Gazette) are translated into Turkish, thus rendering it difficult for members of the Turkish-Cypriot community to be informed about and utilise the new procedures available. No alternative means are used to inform disabled people of non-discriminatory measures such as Braille.

the Ministry of Labour and the Ministry of Justice were not published in the languages of vulnerable groups nor were they especially disseminated to them.

- [31]. The mandate of the Equality Body, as detailed in the following section, goes beyond the minimum requirements of the Race Equality Directive, offering jurisdiction to the Equality Body to cover, beyond race /ethnic origin, grounds covered by the Cypriot constitution, international conventions and other national legislation, including the laws transposing the Employment Framework Directive, and in areas beyond those prescribed by the Race Equality Directive. This has led to a significant body of Equality Body reports, either self-initiated or following complaints, which has by and large changed the terms of the debate in Cyprus particularly with regard to migration and human rights, which was until 2004 dominated by xenophobic discourse. Although no evaluation was carried so far to measure the effectiveness of the Equality Body's mandate, there is a number of research studies offering discourse analysis and examining policy development with regard to immigration.²²

2. Equality Body

- [32]. As with much of the pre-accession harmonisation legislation, there was no public debate over the creation of the 'specialised body' for Cyprus as provided in Race Equality Directive: the bills went through parliament on the eve of accession.²³ However, the question as to

²² N. Trimikliniotis (1999) 'New Migration and Racism in Cyprus: The Racialisation of Migrant Workers', in: F. Anthias and G. Lazarides (eds.) (1999), *Into the Margins: Migration and Exclusion in Southern Europe*, Avebury: Ashgate, pp. 139-178; N. Trimikliniotis (2004) 'Mapping Discrimination in Cyprus: Ethnic Discrimination in a Divided Education System', *The Cyprus Review*, vol. 16, No.1, Spring 2004, pp. 53-86; N. Trimikliniotis and C. Demetriou (2007) 'Cyprus', in: Triandafyllidou, A. and Gropas, R. (ed.) *European Immigration: A sourcebook*, Avebury: Ashgate, , pp.45-58; N. Trimikliniotis and C. Demetriou (2006) *Combating ethnic and racial discrimination and promoting equality: Trends and developments 2000-2005*, RAXEN Special Study; N. Trimikliniotis, N. and C. Demetriou (2008) "Evaluating the Anti-discrimination Law in the Republic of Cyprus: A Critical Reflection", *The Cyprus Review*, Special Issue on *Rethinking Migration; Discrimination and Multiculturalism in a Post-tourist Society*, Volume 20: 2 Fall 2008 , pp. 79-116. Trimikliniotis, Nicos 2004b: Institutional Discrimination, Workpackage 4, in: The European Dilemma: Institutional Patterns and the Politics of 'Racial' Discrimination, Research Project Xenophob, EU Fifth Framework Program 2002-2005, http://www.multietn.uu.se/the_european_dilemma/.

²³ See N. Trimikliniotis (2003) *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Report on Cyprus, 2003*, for EU Commission report on behalf

whether or not to set up a new institution from scratch or to extend the mandate of the Ombudsman was an issue policy-makers were confronted with in the year before accession. It was thought at the time that the Ombudsman would be better placed to take up the duties provided in the Directive, as well as others derived from other international and local legal instruments relating to gender and those referred by the constitution and Protocol 12.²⁴ It was also the least costly option available. The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law²⁵ purports to discharge Cyprus' obligation for harmonization with Article 13 of Race Equality Directive and appoints the Ombudsman or Commissioner for Administration, as the specialised body to combat racist and indirectly racist discrimination. The Ombudsman's office started functioning as the Equality Body on 1.05.2004, the date of Cyprus' accession to the EU, which is the date on which the law appointing the Ombudsman as the Equality Body entered into force.

- [33]. Despite the new powers granted to the institution, it is crucial to note that the dominant logic in the institution remained that derived from the functions of the Ombudsman, which is one of essential *mediation* and not combating discrimination.²⁶ The Ombudsman was modernised in 1991 with a new law²⁷ which provided for an independent office created with the task of monitoring public administration and investigating complaints of maladministration based on the British model with some minor deviations.²⁸ The Cypriot public, the social

of MEDE Consultancies and the Migration Policy Group. Also see N. Trimikliniotis (2005) *Report on Measures to Combat Discrimination 2000/43/EC and 2000/78/EC: Report on Cyprus, 2005*, report drafted for the European Network of Legal Experts in the nondiscrimination field (on the grounds of Race and Ethnic origin, Age, Disability, Religion or belief and Sexual Orientation) report on behalf of Human European Consultancies and the Migration Policy Group, at

http://www.migpolgroup.com/multiattachments/3500/DocumentName/cyrep05_en.pdf

²⁴See N. Trimikliniotis (2003) *Report on Measures to Combat Discrimination Directives 2000/43/EC and 2000/78/EC: Report on Cyprus, 2003*, for EU Commission report on behalf of MEDE Consultancies and the Migration Policy Group.

²⁵Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(I)/ 2004 (19.03.2004)

²⁶The origins go back to 1972, when it was originally set up by the first Law on the Commissioner for Administration Cyprus/ Law 107/1972. However, the politically turbulent years prior to 1974 and the war of 1974 caused considerable delay to the actual operation of the office.

²⁷Cyprus/ Law No. 3/1991, as amended by Law No. 98(I)/1994; 101(I)/1995; 1(I)/2000 and 36(I)/2004.

²⁸Interview with Aristos Tsiartas, Head of Human Rights Sector of the Commissioner for Administration and head of the Anti-discrimination body 26.9.2008. The official website refers to the Swedish Ombudsman model established over 100 years ago as the point of reference, see

http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/index_gr/index_gr?OpenDocument

partners, Government officials, including most MPs who voted the new law still do not distinguish between the functions and powers of the specialised body and those of the ombudsman: the Equality body is subsumed in the logic of an ombudsman whose role is, unlike the Swedish ombudsman, a toothless mediating function with no binding powers.

- [34]. The mandate of the Equality Body covers discrimination forbidden by law, which includes discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin. Furthermore, the same law empowers the Equality body to promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution and by the Conventions ratified by the Republic of Cyprus (such as the Protocol Twelve) and referred to in the Law and to promote equality of opportunity in employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing.
- [35]. The law vests the Equality Body with powers beyond those prescribed by the two EU Directives such as: the power to receive and investigate complaints of discriminatory treatment, behaviour, regulation, condition, criterion or practice prohibited by law; the power to issue reports of findings; the power to issue orders (through publication in the Official Gazette) for the elimination, within a specified time limit²⁹ and in a specified way, of the situation which directly produced discrimination, although such right is somewhat limited by a number of exceptions.³⁰ The Equality Body's decisions can be used for the purposes of obtaining damages in a district court or an employment tribunal. The Equality Body's is further empowered to impose small

²⁹ Which time limit shall not exceed 90 days from publication in the Official gazette (The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 28).

³⁰ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), section 14(2) and section 14(3), Part III, list the limitations to the Commissioner's power to issue orders as follows: where the act complained of is pursuant to another law or regulation, in which case the Commissioner advises the Attorney General accordingly, who will advise the competent Ministry and/or the Council of Ministers about measures to be taken to remedy the situation [The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 39(3) and 39(4)]; and where discrimination did not occur exclusively as a result of violation of the relevant law; where there is no practical direct way of eradicating the situation or where such eradication would adversely affect third parties; where the eradication cannot take place without violating contractual obligations of persons of private or public law; where the complainant does not wish for an order to be issued; or where the situation complained of no longer subsists.

finer,³¹ to issue recommendations to the person against whom a complaint has been lodged, and to supervise compliance with orders issued against persons found guilty of discrimination.³² However, all orders, fines and recommendations issued or imposed by the are subject to annulment³³ by the Supreme Court of Cyprus upon an appeal lodged by a person with a ‘vested interest.’³⁴ The Equality Body may also investigate issues on his/her own right where the it deems that any particular case that came to his/her attention may constitute a violation of the law.³⁵ Also, the Equality Body’s may investigate cases following applications by NGOs, chambers, organizations, committees, associations, clubs, foundations, trade unions, funds and councils acting for the benefit of professions or other types of labour, employers, employees or any other organised group, local authorities, public law persons, the Council of Ministers, the House of Parliament etc.³⁶ In such cases, the Equality Body is empowered to issue recommendations to the person or group found guilty of discriminatory behaviour as to alternative treatment or conduct, abolition or substitution of the provision, term, criterion or practice. The findings and reports of the Equality Body must be communicated to the Attorney General who will, in turn advise the Republic on the adoption or not of appropriate legislative or administrative measures, taking into account the Republic’s international law obligations and who will at the same time prepare legislation for the abolition or substitution of the relevant legislative provision.

³¹ The fine to be imposed cannot exceed CYP350 (600 Euros) for discriminatory behaviour, treatment or practice [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 18(a)], CYP250 (427 Euros) for racial discrimination in the enjoyment of a right or freedom [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 18(b)], CYP350 (600 Euros) for non-compliance with the Commissioner’s recommendation within the specified time limit [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 26(1) (a)] and CYP50 (85 Euros) daily for continuing non-compliance after the deadline set by the Commissioner [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 26(1) (b)].

³² Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 24(1).

³³ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 23.

³⁴ Term used in Section 146 of the Cyprus Constitution, which sets out the procedure for appeal to the Supreme Court of Cyprus.

³⁵ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 33.

³⁶ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 34(2).

[36]. In addition to the mandate to combat discrimination on the grounds prescribed in the two directives 43/2000/EC and 78/2000/EC, the law³⁷ vests the Ombudsman with the mandate to

- combat discrimination forbidden by law and generally discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin³⁸;
- to promote equality of the enjoyment of rights and freedoms safeguarded by the Cyprus Constitution (Part II) or by one or more of the Conventions ratified by Cyprus and referred to explicitly in the Law³⁹ irrespective of race, community, language, colour, religion, political or other beliefs, national or ethnic origin⁴⁰ and
- promote equality of opportunity irrespective of grounds listed in the preceding section in the areas of employment, access to vocational training, working conditions including pay, membership to trade unions or other associations, social insurance and medical care, education and access to goods and services including housing.

Furthermore, the Equality body deals with gender discrimination in employment and vocational training,⁴¹ sexual harassment, maladministration and human rights violations by the public sector.

[37]. The limitations of the Equality body can be located primarily in:

- The limited fines it can impose which are so minor that puts into question whether they can act as a genuine deterrent of discrimination.⁴²

³⁷ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19.03.2004)

³⁸ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19.03.2004), Section 3(1) (a), Part I.

³⁹ These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention against Torture and Inhuman and Degrading Treatment or Punishment.

⁴⁰ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/2004 (19.03.2004), Section 3(1) (b), Part I.

⁴¹ Law on Equal Treatment of Men and Women in Occupation and Vocational Training No. 191(I)2004, purporting to transpose Directives 76/207/EEC and 97/80/EC.

⁴² The Equality body may impose a fine up to 350 Cyprus pound (600 euro) for failure to comply with recommendation under Section 25 [Section 26(1)(a)] and/or up to 50 Cyprus pound (about 85 euro) per day for continuing failure to comply after the expiry of the deadline set for compliance of the recommendation.

- The fact that it has since its inception in 2004, been greatly understaffed and under funded by the government,⁴³ which partly accounts for the fact that it has not made full use of the powers granted to it by the law. The lack of resources is also the reason why little or no measures have been taken in order to bring to the attention of vulnerable groups (members of the Turkish Cypriot community, the Roma, the Pontians, migrant workers and asylum seekers) the new legal developments and the new complaint procedures open to them. By way of example, the Ombudsman's website until this date continues to be only in Greek.
- The ways in which its functions are carried out. The question as to whether the duties of the Equality Body performed by the Ombudsman are fully discharged is open for discussion, as the Equality Body seems to be submerged into the Ombudsman: it does not have a separate office or budget or staff or website, nor does the public know the distinct role or powers of the Equality Body.⁴⁴ Moreover, after four years of operation and after having investigating over 900 complaints, one branch of the Equality Authority, the Anti-discrimination body has so far failed to impose any sanctions and to make any binding recommendations, preferring to act in a mediating role.⁴⁵ Only the Equality Authority, in exceptional circumstances, has imposed some fines and has made its decisions binding. This policy is at least partly responsible for the low compliance rate with its decisions, particularly on the part of the police.⁴⁶

It seems that the ethos, practice and operation of the Ombudsman creates some confusion in its role as the Equality Body and the fact that

⁴³ In his 2006 report (dated 29.03.2006), the Commissioner for Human Rights of the Council of Europe Mr. Alvaro Gil-Robles expresses his regret for the fact that the necessary increase in funding to deal with the extra work-load has not been provided to the ombudswoman and recommends that greater resources be devoted to this office to enable it to deal effectively with its new competencies. Similarly, in its third report on Cyprus dated 16.05.2006, ECRI also stresses the need for resources to be made available to the Ombudsman to enable her to respond to her tasks.

⁴⁴ Even MPs, who are lawyers by profession do not seem to be aware that the Equality Body can make *binding* decisions, as was discovered during the debates on the rights and freedom of movement homosexual partners of EU citizens in Cyprus following a report by the Anti-discrimination body (see File No AKP 68/2008).

⁴⁵ For the latest report of the national expert for Cyprus of the European Network of legal Experts in the non-discrimination field, see C. Demetriou (2008) *Cyprus Country Report 2007*, State of affairs up to 29 February 2008. For the latest published report see Trimikliniotis, N. (2007) *Cyprus Country Report 2006* (State of affairs up to 29 February 2007) at http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/cysum07_en.pdf

⁴⁶ In October 2004, the Ombudsman Eliana Nicolaou presented a report to a Committee of the House of Parliament, where she criticized the police as having the lowest rate of compliance with her decision (reported in Hadjivasilis, M. (2004) 'Ston kalatho ta 40% ton ektheseon tis Epitropou' ['40 per cent of the reports end up in the dustbin', in *Philelitheros* (28.10.2004).

all these bodies are headed by the same person sharing office premises and members of staff makes matters even more confusing. Overall, the benefits of having a large office are outweighed by the apparent inability of the Equality Body to assert itself by creating its own identity and profile as a public institution for citizens and vulnerable groups to recognise and develop trust.⁴⁷

- [38]. The Equality Body's extended mandate and particularly its right to promote equality of the enjoyment of rights and freedoms safeguarded by international conventions ratified by Cyprus⁴⁸ irrespective of race, community, language, colour, religion, national or ethnic origin has led to a number of decisions in favour of victims of discrimination on the ground of their nationality, drawing on Protocol 12 of the ECHR, and has enabled the equality body to issue reports and recommendations on issues like the right of asylum seekers to work, drawing on the International Covenant on Economic Social and Cultural Rights (articles 2.2 and 6), and salaries in the agricultural sector which is predominantly if not exclusively operated by migrant workers, drawing on ILO conventions and the Revised Social Charter.
- [39]. The authors are of the view that the inadequacies in combating racial discrimination are primarily institutional in nature. Whilst there has been progress in the institutional arrangements to combat discrimination with the establishment of the equality body, it has failed to acquire in practice an effective role as a binding decision-maker in combating discrimination. Moreover, the failure to impose sanctions is not giving the necessary negative signals to perpetrators, society and the public authorities, so that it is abundantly clear to all that discrimination is not only morally repugnant and unacceptable, but it carries effective and dissuasive sanctions for perpetrators. In many of its investigations the reasoning by the Equality Body is insightful and attempts to uncover the root-cause of discriminatory practices or laws; however it fails to back this reasoning with effective sanctions. Despite the importance of the Equality Body as a hub for complaints - it has dealt with more than 1000 discrimination complaints on all grounds so far - it has failed to impose *any* sanctions. The authorities as well as the public at large are still largely

⁴⁷ For a more elaborate analysis on this issue see N. Trimikliniotis and C. Demetriou (2008) "Evaluating the -discrimination Law in the Republic of Cyprus: A Critical Reflection", *The Cyprus Review*, Special Issue on *Migration, Racism and Multiculturalism in Cyprus*, Vol. 20: 2 Fall 2008, pp. 79-116.

⁴⁸ These Conventions are: Protocol 12 of the European Convention for Human Rights and Fundamental Freedoms; the International Convention for the Elimination of All Forms of Racial Discrimination; the Framework Convention for the Protection of National Minorities; the Covenant for Civil and Political Rights and the Convention Against Torture and Inhuman and Degrading Treatment or Punishment.

unaware of the new enhanced legal regime to combat discrimination, assuming that the role of the Equality body is merely mediatory and informative as it has failed to make binding decisions out of choice. The Equality Body is subsumed organisationally, functionally and practically into the old and essentially toothless Ombudsman framework which prevents it from becoming a genuinely independent force as a catalyst for change beyond the formalism and apparent failures of the slow, expensive and distant court system of the country. Although the equality body in general takes a positive human right-centered approach regarding some issues (e.g. immigrants' rights), it is very reluctant to address discrimination against Turkish Cypriots and adopts the governmental position of endorsing the 'doctrine of necessity', denying Turkish Cypriots their constitutional rights by invoking a court decision of 1964. The equality body also appears reluctant to take up issues of anti-Turkish public discourse in the media, particularly when this is expressed by politicians (there are complaints pending since 2004). A more brave and impartial approach is needed by this body which is the only institution that can effectively pursue issues of discrimination against the most vulnerable of victims.

- [40]. The total budget for the Ombudsman for the year 2008 was 1.655.895 euro and for 2009 the sum approved is 1.792.603 euro. From 2005 the budget has been increasing from 1.186.132 euro, to 1.395.068 for 2006 and 1.526.523 for 2007. There is no separate budget for the Equality body and the members of staff do not work exclusively for one or the other institution.
- [41]. Generally speaking, the Ombudsman's office, and consequently the Equality Body, function independently and effectively. There are, however, two issues which may theoretically pose a problem: first, the fact that the members of staff are appointed by the Public Service Commission (whose members are appointed by the President of the Republic); and secondly, the fact that it does not have its own separate budget and depends for that on the Ministry of Finance, which is responsible for compiling the overall government budget and submit it to Parliament for approval. This latter consideration may, theoretically, prejudice the outcome of an investigation into the actions of the Ministry of Finance and damage the impartiality of the institution. This is not to imply that either of these considerations has so far actually affected the impartiality of the investigations undertaken. The Ombudsman is the only independent officer requiring the House of Representatives' consent for appointment. Because of this characteristic, it is believed that it is not part either of the

executive, or the legislature, or the judiciary.⁴⁹ However, this strict interpretation is problematic in that the Ombudsman exercises public authority in the form of ‘mediation’ and the function is considered to be ‘extra-judicial’. In reality the function of the institution varies between mediation/ arbitration to ‘quasi-judicial’. Even if it is not under the strict hierarchy of the judiciary (in terms of the constitutional doctrine of ‘separation of powers’), it is subject to judicial scrutiny as with all other public authorities under article 146 of the Constitution.

- [42]. Theoretically victims may use the Equality Body’s decision in order to claim compensation from the Courts but in practice this has not happened so far, perhaps because victims of racial/ethnic discrimination very rarely have the means to instigate a legal suit; also they rarely have the luxury of waiting for a number of years until their case is adjudicated in Court.. The scope of the legal aid law excludes administrative recourse, although a recent ECtHR decision found that “a question arises as to the conformity of such legislation with the requirements of Article 6 of the Convention” and that “there is *a priori* no reason why it should not be made available in spheres other than criminal law.”⁵⁰ The legal aid law extends to human rights violations covered by the Cypriot Constitution and a number of international conventions including the Convention for the Elimination of All Forms of Discrimination, but not to the laws transposing the Race Equality Directive.⁵¹ It follows that the wide ambit and new offences introduced by the Race Equality Directive are not covered by legal aid although in principle article 28 of the Cypriot Constitution could also be used to bring racial discrimination to court.
- [43]. The impact of the anti-discrimination legislation and particularly of the right to use the Equality Body’s decision to obtain compensation in Court may be severely hampered by the narrow approach sometimes taken by Cypriot Courts. For instance, in a case concerning a job vacancy with an age limitation, an employment tribunal ruled that it had no jurisdiction to decide on this dispute because it concerned events taking place prior to the potential employment and

⁴⁹ This is the view put forward by N. Charalambous (2004) *Η Δράση και ο Έλεγχος της Δημόσιας Διοίκησης* [*The Action and Control of the Public Administration*], second edition, Nicosia, Cyprus, p. 405.

⁵⁰ *Marangos v. Cyprus*, Application no. 12846/05, dated 04.12.2008. In this particular case, the applicant’s claim that his right to a fair trial was violated as a result of the non-availability of legal aid was rejected by the ECtHR, which found that the applicant had reasonable opportunity to present his case given that he had been represented by a lawyer at the first instance proceedings, he had the skeleton argument for the appeal drafted by his lawyer and he was entitled to appear in person before the Supreme Court and could address the court on the basis of the skeleton argument.

⁵¹ Cyprus/ Law on Provision of Legal Aid (2002) N. 165(I)/2002.

since there was no employment relationship between the parties there was no labour dispute at all.⁵² Similarly, in another case the Supreme Court rejected an application for referral to the ECJ of the question whether article 2 of the Race Equality Directive could be interpreted in a manner permitting an EU member state to deny the lawful owner of a property the right to sell it. The application was rejected on the ground of abuse of process (the appellant had filed and withdrawn two similar applications in 2005 and 2007 respectively) and also because the Court found that the scope of the Directive did not include the issue at stake, which was access to property. In describing the scope of the Directive, the Court mentioned only ‘conditions for access to employment, working conditions, social protection including social security and social advantages’ and omitted housing.⁵³

- [44]. The Equality Body may investigate issues on its own right where it deems that any particular case that came its attention may constitute a violation of the law.⁵⁴ It may also issue Codes of Good Practice regarding the activities of any persons in both the private and public sector, obliging them to take practical measures for the purpose of promoting equality of opportunity irrespective of community, racial, national or ethnic origin, religion, language and colour.⁵⁵ The limited budget and resources of the Equality Body, however, restrict it to only a few self-initiated investigations a year, and only one code of conduct so far, on sexual harassment at the workplace.
- [45]. The Equality body sometimes initiates investigations following media publications of manifestly racist incidents or acts upon information derived from other sources. In its capacity as ombudsman, it has also investigated on its own initiative issues of general public interest such as sex trafficking, Roma housing, detention conditions, and others. Statistics are only occasionally used in its decisions in order to demonstrate the intensity of a problem, such as the number of mixed marriages, the number of asylum seekers, the salaries applicable in particular sectors of the economy etc. The limited resources of the Equality Body do not permit a wide activity into all areas of public interest and often its intervention into several issues comes too late, after a victim has been deported or the issue is no longer at stake. However, one cannot ignore the fact that amongst the various actors involved in public debates, such as the

⁵² Cyprus/ Limassol Labour Tribunal / Avgoustina Hajiavraam v. The Cooperative Credit Company of Morphou/ Case No. 258/05 (30.07.2008).

⁵³ Cyprus/ Supreme Court / Perihan Mustafa Korkut or Eyiam Perihan v. Apostolos Georgiou through his attorney Charalambos Zoppos/ Case No. 303/2006 (17.12.2007).

⁵⁴ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 33.

⁵⁵ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Sections 40, 41 and 42, Part VI.

school teachers, the politicians, the police, the immigration authorities etc, the voice of the equality body is often the only one that will locate and raise the question of racism and defend the rights of victims.

- [46]. The Equality Body does not have its own website, however some of its reports appear in the website of the ombudsman (www.ombudsman.gov.cy) merged together with reports of the ombudsman, without any clarification as to the separate functions of the two institutions. Every year, each one of the two authorities comprising the Equality Body⁵⁶ issue an annual report for the preceding year where summaries of all important decisions are provided, as well as statistical analyses of the number of complaints received, the field of ground concerned and the outcome. All its decisions are available in hard copy upon request. However, the methodology of compilation of the data is not always clear, because the information is sometimes merged under the same heading. For instance, under the same statistical table one may find various grounds for discrimination as well as the different fields of application (e.g. discrimination on the ground of disability: 2%; discrimination in education: 6%). It is therefore impossible to deduce instantly how many complaints were received every year, for which ground and how many of these were found to justified, particularly as the vast majority of complaints do not lead to binding decisions with sanctions but to mere recommendations or advice. This practice follows the methodology of compiling statistical data for the purposes of the Ombudsman's reports where, in addition to the aforesaid method, complaints are classified according to the ethnic origin of the complainant (migrants, Turkish Cypriots etc)
- [47]. It should be noted that the rate of unfounded complaints submitted to the Ombudsman is rather low: in 2006, out of a total of 5,054 submitted, there were only 748 unfounded complaints, in 2005 out of a total of 4,688 complaints, 743 were unfounded; and in 2004, out of a total of 3,576 complaints submitted, there were 550 unfounded complaints.
- [48]. The Equality Body has a role in advising the government on human rights issues that affect it, however, this is done on an ad hoc basis upon invitation by other Government institutions. In addition, it participate in the consultation process of drafting legislation in their respective areas of competence. The various committees of the House of Representatives (Parliament) invite the Ombudsman and the Equality Body on a regular basis on issues that are relevant to the

⁵⁶ The Equality Authority dealing with employment issues and the Anti-discrimination Authority dealing with issues beyond employment.

areas of their work.⁵⁷ The Recommendations issued are the result either of a legal opinion clarifying or interpreting legislation in any particular area or follow up investigations, particularly in the case of the Ombudsman and the Equality Body, whose mandate includes the questioning of witnesses, on-site visits and other investigative methods. Public authorities tend to comply with the recommendations issued by these bodies, although this is not a rule. The Ombudsman, who is also the head of the Equality Body, repeatedly expressed her disappointment over the fact that the police have the lowest compliance rate when it comes to adopting recommendations. No impact assessment or other evaluation has been carried out by these organisations or by other organisations in order to evaluate the impact on government policies; occasionally however the Ombudsman publishes rates of compliance of the various governmental departments with her decisions in particular cases.

[49]. The key publication of the Equality body is an annual report published by each of the two bodies it comprises of (the Equality Authority and the Anti-discrimination Authority) issued at about the end of each year and it concerns the year before. This is essentially an activity report for the year; containing short summaries of cases as well as statistical data on the complaints, such as the number and nature of complaints (profile of complainant, profile of perpetrator, outcome of investigation).

[50]. In 2007, in the framework of the European Year for Equal Opportunities, the Equality Body commissioned two independent surveys on perceptions of the Greek Cypriots issues pertaining to discrimination on the ground of racial/ethnic origin. Both surveys were funded by the European Commission. One of the two surveys concerned the attitudes of various social groups regarding issues of racism and discrimination. The survey covered the Greek Pontian community of Cyprus and their opinion about Greek Cypriot attitudes and was carried out in the two months of June and July of 2007. The survey covered a representative sample of 400 posing questions on many possible areas of friction and discrimination. More analytically the results of the survey are presented in the following table:

Table: State discrimination towards Pontian Greeks

(PERCENT)

| | | | | | |
|---------------------------|-----|-----|------|------|-----|
| Educational opportunities | 1.8 | 2.0 | 11.7 | 84.5 | 100 |
| Medical treatment | 1.0 | 4.0 | 13.3 | 81.7 | 100 |

⁵⁷ Interview with Aristos Tsiartas, Head of Human Rights Sector of the Commissioner for Administration and Head of the Anti-discrimination body 26.9.2008.

| | | | | | |
|------------------------|-----|-----|------|------|-----|
| Public assistance | 1.3 | 5.0 | 17.5 | 76.2 | 100 |
| Social insurance | 1.3 | 1.0 | 4.0 | 93.7 | 100 |
| Professional training | 2.0 | 8.5 | 10.3 | 79.2 | 100 |
| Business establishment | 0.8 | 2.7 | 14.0 | 82.5 | 100 |
| Police | 2.8 | 9.2 | 18.0 | 70.0 | 100 |
| Courts | 1.0 | 2.3 | 5.2 | 91.5 | 100 |
| Voting | 1.5 | 6.8 | 25.2 | 66.5 | 100 |

[51]. The findings of the survey about the treatment of the Pontians conducted by the Equality Body were disputed by some Pontian organisations as misleading and inaccurate.⁵⁸ A representative of the Pontian Associations in Cyprus, stated to the newspaper *Phileleftheros* that the figures are not representative as the sample of Pontians interviewed was small and questioned the finding that 55% of Greek-Cypriots do not want the Pontians. He asked “why 15 years after being here such a large number of Greek-Cypriots do not want us?” He also questioned why the Pontians were not asked the same questions as the Greek-Cypriot interviewees. He added that their condemnation of this survey was sent to all Pontian organisations internationally.

[52]. The second survey was published in 2007 and was titled “Attitudes and Beliefs of Greek Cypriots towards people with different religious convictions and affiliations who live in Cyprus”. The fieldwork took place between 14-31 May 2007 with a sample of 650 individuals, aged 18 years old and above. The main findings of the research are the following:

- Almost two out of three Greek Cypriots do not have close friendships with individuals of other religions.
- Almost half of Greek Cypriots consider the existence of religious discrimination as “somewhat widespread”.
- Three out of four declare that Cyprus does not need more individuals from different religious convictions and affiliations.
- Almost half of Greek Cypriots believe that if someone does not belong to the Orthodox Church this constitutes a disadvantage when competing in the labor market.

⁵⁸ Christodoulou, D. (2007) ‘Αμφισβητούν τα πορίσματα της Επιτρόπου οι ελληνοπόντιοι- Διερωτούνται γιατί να μην τους θέλει τόσο μεγάλο κομμάτι του ντόπιου πληθυσμού’, [‘The Greek Pontians are disputing the findings of the Commissioner – the wonder why such a large segment of the population does not want them’] *Φιλελεύθερος*, 4.12.2007.

- The majority do not know that laws exist in Cyprus prohibiting discrimination when hiring new employees on the basis of someone's religious beliefs.
- Forty per cent support the application of positive discrimination favoring individuals from other religions or dogmas in the labour sector.
- Eighty six per cent state that they wouldn't marry a Muslim and 61 per cent stated they would be annoyed if their child were to marry a person from another religion. The percentage of those who wouldn't marry a Catholic amounts to 47%.
- Sixty-eight per cent disagree with the abolishment of obligatory praying and church attendance in the school and in the army. Also 51 per cent disagree with the abolishment of reporting religious affiliation on public sector job applications. In addition 50 per cent disagree with the idea of more neutral religious courses at school.
- The perception that Muslim religion leads by its nature to extreme behavior is shared in Cyprus by almost all subgroups of the population. Even the individuals with university or college education largely adopt this conviction.
- Half of Greek-Cypriots agree with the opinion that Muslims are prompt to religious fanaticism and thus they should be prevented from climbing employment hierarchies.
- Most Cypriots say that they wouldn't mind having a Muslim as a colleague or as a neighbor. They wouldn't mind also if their doctor were Muslim. Also the majority of respondents say that they wouldn't have a problem if their child had a Muslim friend, but they would mind if a Muslim temple were to be erected in their neighborhood.

[53]. The Equality Body is involved in various panel discussions, leafleting campaigns particularly on anti-discrimination at national level, but also on gender discrimination and sexual harassment at work. The Equality Body has received EU funding for some national campaigns on the subject of equality, anti-discrimination awareness.

[54]. The researchers are of the opinion that the Equality body has played a important role so far in attracting complaints or racial or ethnic discrimination, particularly in the public sector, but less so in the private sector. In the initial stages the institutional it probably made financial sense, and arguably organisational sense to empower the Ombudsman as the Equality body: the Ombudsman was already

dealing with such issues and lawyers, NGOs and the public used the Ombudsman as a kind of ‘soft’ redress of grievances that carried some persuasive authority in courts and with the administration. However, it is now apparent the current institutional arrangements are inadequate in combating racial discrimination. Retaining the Equality Body under the shadow of the Ombudsman may be hindering the institutional development of a robust antidiscrimination system beyond the courts. The logic of the Ombudsman with its emphasis on mediation, primarily in cases dealing with maladministration is proving to be hindering force in the following instances:

- It prevents the Equality Body from becoming an effective force in practice that makes binding decisions in combating discrimination and signalling to perpetrators, society and the public authorities that discrimination is not only morally repugnant and unacceptable, but it carries effective and dissuasive sanctions for perpetrators. Despite the importance of the Equality Body as a hub for complaints - it has dealt with hundred of complaints so far, it has failed to impose *any* sanctions on race or ethnic discrimination cases.
- The authorities as well as the public at large are still largely unaware of the new enhanced legal regime to combat discrimination, assuming that the role of the Equality Body is merely mediatory and informative as it has chosen not to make binding decisions.
- The traditional role of the Ombudsman in dealing exclusively with the public administration is holding back the Equality Body from acting as effective force in the private sector, in employment relations, the economic sphere and commerce. Not is the Ombudsman’s own reluctance to engage in widespread discrimination in the private sector as many studies show proving to be problem, but there is resistance and confusion in the understanding of the role of the Ombudsman by the authorities and the public at large. The example of the reactions of the social partners in only case where the Equality body intervened on a collective bargaining agreement is indicative of the resistance and lack of understanding of the nature of the Equality Body’s intervention.⁵⁹
- The Equality Body is subsumed organisationally, functionally and practically into the old Ombudsman and this prevents it from becoming a genuine independent force, or a catalyst for change beyond the formalism and the apparent failures of a slow and little trusted court system.

⁵⁹Case AKI 5/2005 17.5.2008. See section on social partners for more details on the case.

[55]. We are of the opinion that for the Equality body to become a genuine “catalyst for change” in combating discrimination,⁶⁰ then an alternative institutional arrangement is required: there have been some calls for making the Equality Body independent from the Ombudsman. Not only does the Equality body on its own have the capacity, expertise and experience to discharge of its legal and moral duties designated by the law as required by the antidiscrimination acquis more effectively than being tied to the Ombudsman, but we are of the opinion that the most effective way to fulfil the task of combating discrimination in Cyprus is to separate them institutionally, so that there is confusion in the roles of the two and to ensure that the Ombudsman is no longer draining the Equality authority of its resources and staff to deal with Ombudsman functions.

3. Assistance

[56]. The new laws transposing the Race Equality Directive have eased the criteria for an association to engage in judicial or other procedures allowing organisations who are interested parties to represent their members, provided they have “legal standing” or “a legitimate interest” and the consent of their affected members.⁶¹ Although this presents considerable improvement to the previously existing law, where the test of who has a “legitimate interest” was hard to satisfy,⁶²

⁶⁰See R. Holtmaat (2007) *Catalysts for Change: Equality Bodies according to Directive 2000/43/EC*, Migration Policy Group, accessed 20.3.2009, http://www.migpolgroup.com/multiattachments/3869/DocumentName/ke7606350_en.pdf

⁶¹ Cyprus/ Law on Equal Treatment Irrespective of Racial or Ethnic Origin N. 59(I)/2004, article 12 (31.03.2004). Article 12 of the law provides that organisations or other legal persons whose aim, as articulated in their constitution, is the eradication of discrimination on the ground of racial or ethnic origin may, with the permission of the person who has the right under this law, apply to the district courts claiming compensation. In addition, such organisation has the right to file a complaint to the equality body on behalf of such person. No organisation has so far made use of this provision in order to bring a case to Court on behalf of a victim of discrimination, although several complaints have been submitted by NGOs to the specialised body on behalf of specific individuals as well as on behalf of vulnerable groups in general.

⁶²The interpretation given to Article 146(2) of the Constitution by the Supreme Court in the case of *Osman Saffet v. the Cyprus Palestine Plantations Co. Ltd* and another restricted the right of recourse to physical and legal persons who had been adversely and directly affected and had legitimate interest. ‘Representatives’ were not considered to have legitimate interest⁶² and the term “community” is defined as meaning the Greek and Turkish communities, as defined in Article 2 of the constitution. In order for an association to have a legitimate interest, the specific administrative act under review must have *directly affected* the whole or part of the

in practice associations have made little use of this opportunity. NGOs regularly file complaints with the Equality Body but have not as yet taken any case to Court.

- [57]. The minimum requirements under Article 7/2 of the Race Equality Directive have been met; the Cypriot law however does not go beyond the minimum requirements of Article 7/2 of the Race Equality Directive.
- [58]. At this stage and given that NGOs have not made use of the aforesaid provision in order to bring cases to Court on behalf of their members, no assessment of the effectiveness of this provision is possible. In theory, the provision paves the way for more practical involvement of NGOs in the fight against discrimination. In practice, no NGO at the moment offers free Court representation to victims of discrimination, as that would require the hiring of a lawyer from a law firm in order to take the case to Court. Although there are legal advisors working for some NGOs and providing legal advice to victims, in order for these persons to be permitted to appear in Court they need to have Bar Association license and work for a law firm.
- [59]. It is impossible to assess the efficacy or quality of the legal advice offered by NGOs to victims, however legal advisors working for NGOs often lack Court training, as their duties do not extend to Court representation.
- [60]. There are two NGOs offering assistance to victims of discrimination but only one of the two employs a lawyer and is active in submitting complaints to the Equality Body. Another NGO specialises in providing support to victims of sex trafficking and a fourth one offers legal assistance and victim support to asylum seekers and refugees and at the same time runs a project of rehabilitation of torture victims. None of them offers Court representation, although in the case of the NGO assisting trafficked women, lawyers were hired to offer Court representation, the cases concerned trafficking and not discrimination.
- [61]. Turkish Cypriots residing in / working in / visiting the Republic controlled south of Cyprus, as well as the Cypriot Roma, are not covered by any NGO activity, despite being mentioned in the Third ECRI report for Cyprus as vulnerable groups.

membership, whereas if it only affected one member or if there are conflicting interests between members then the association had no legitimate interest (*The Police Association v. The Republic*).

- [62]. There are no public bodies offering legal assistance or representation in discrimination cases, nor are there public funds available for NGOs who would like to offer assistance and representation to victims. Lawyers working for NGOs are almost exclusively dealing with asylum, on funding provided by UNHCR or the European Refugee Fund, which is contributed to by the European Commission and the Republic of Cyprus. In these cases, however, anti-discrimination is only a small part of their work, focusing more on asylum procedures and the rights of refugees. The financial risk of legal procedures in discrimination cases is carried by the claimant / victim, unless s/he has secured legal aid.

4. Social Partners

- [63]. As indicated in the previous section, the laws purporting to transpose the Race Equality Directive eased the criteria for an association to engage in judicial or other procedures allowing trade unions to represent their members in administrative or judicial procedures. Prior to transposition of the Race Equality Directive, it was not possible for associations to represent members or others whom the association claim to speak for and it was for the victim in person to utilize the various legal routes in cases of discrimination.
- [64]. In practice the social partners have not made use of this opportunity. No trade union has the capacity to offer legal representation in courts, even though some trade unions employ lawyers as legal advisors. Trade unions have the legal capacity to pursue class action but none has taken place yet.
- [65]. Overall, trade unions have generally been reluctant to pursue any action outside their strict labour relations mandate (other than leisure and services to their members). PEO, one of the two largest federations of trade unions is the only organisation with some activity in the area of immigration, running its own “migrant workers bureau”, an office dealing with problems facing migrant workers. Also, PEO employs three Turkish-Cypriots, has a few thousand Turkish Cypriot members and works very closely with DEV-IS, a Turkish-Cypriot trade unions and organisations in the Turkish Cypriot community. Trade unions have a large member base. ETYK, the trade union of bank employees, has 10.000 members. PEO and SEK, the federations of trade unions of the left and of the right respectively have around 80.000 members each. PASYDI, the union of public servants has 25.000 members, DEOK has 8.000 members. A tripartite system of cooperation amongst trade unions, employers’

unions and the Minister of Labour has so far ensured good labour relations but anti-discrimination has not featured in their debates.

- [66]. Trade unions have not been sufficiently supporting or providing assistance to victims of discrimination on the ground of race or ethnic origin for a number of reasons. There has certainly been a decisive shift towards a much more pro-migrant approach, which is reflected the trade unions' anti-discriminatory discourses.⁶³ However, in practice they have not intervened much. In fact trade unionists recognise that they are not directly involved in combating discrimination, unless it is a matter that arises from and as part of labour relations; they see this as the function performed by NGOs which are better placed to do so. An officer from the PEO migrant bureau informed me when they receive such complaints they are referred to NGOs which deal with such matters.⁶⁴ However, trade unions seem reluctant to get too closely identified with the subject for the following reasons: trade unions are from their very nature based on the notions that unity is a source of strength, but this unity presupposes a given number of subjects: unity but between *whom*? The question of inclusion and exclusion is there from the outset of the union logic. Existing union members are already in a position of strength vis-à-vis the newcomers or future members. The interests of the 'marginal' or 'external' groups of workers, who are less unionised, are not as well represented. Hence the prevailing logic is to avoid issues that are likely to appear 'divisive' and more importantly may alienate the 'core' workers, who are often the 'locals', the 'indigenous' workers. Employers are known to use divisive tactics and migrant labour as useful methods to push for their own interests. Of course it is in the interests of the unions in the longer-term to incorporate and represent all workers irrespective of ethnic origin, but this may not prevail in the short-term. Also, unions are based on a collective industrial/employment logic that aims at the smooth operation of labour relations in the sector: unless anti-discrimination takes a more collective form, as part of the daily trade union activities and work, or some form of class action, it may appear as 'individualistic', particularly if is based on legalistic formulas. Moreover, trade unions in Cyprus are reluctant to take any legal route that deviates from their own territory (i.e. labour relations), unless it is the last resort, if at all. The trade unions have not made any complaint whatsoever to the Equality body over the

⁶³ See N. Trimikliniotis (1999) 'New Migration and Racism in Cyprus: The Racialisation of Migrant Workers', In F. Anthias & G. Lazarides (eds.) *Into the Margins: Migration and Exclusion in Southern Europe*, Ashgate, Avebury, pp. 139-178; N. Trimikliniotis and P. Panatelides (2003) "Mapping Discrimination in Cyprus: Ethnic Discrimination in the Labour Market", *The Cyprus Review*, vol. 15:1, Spring 2003, pp. 121-148.

⁶⁴ The information was given by the trade unionist Nicos Gregoriou from PEO migrant bureau.

last five years. We are informed that social partners reacted negatively to the Equality body's intervention in the employment in the agricultural sector, stating that the 'Ombudsman' should not delve in employment relations – denying or not recognising that they were dealing with a different capacity of the institution, as the Equality Body. In that case the Equality Body found that the collective agreement reducing benefits for migrant workers as discriminatory and unlawful.⁶⁵ Employers were very hostile at the time but trade unions tended to concur that the intervention of the Equality Body was unwarranted.

- [67]. Trade unions and NGOs working in the field do cooperate together. However, there has been little initiative on the issues of combating discrimination, that extends beyond the traditional employment relations issues: for instance trade unions have insisted that the criteria for issuing work permits for third country nationals should ensure that these workers enjoy the same rights as local workers and that the collective agreements are abided by.
- [68]. Co-operation between trade unions and NGOs is rather new and relatively successful, albeit marked by the inequality of power and influence between the mass based omnipotent trade union and the under-resourced NGO. This co-operation is often based on, or is manifested in their joint participation in EU funded programs such as EQUAL, PROGRESS and ERF and trade unions have taken up many projects on awareness raising in the forms of seminars, conferences and training. There are organisational, structural and cultural barriers that prevent them from taking decisive anti-discrimination action on the basis of a longer-term strategy.
- [69]. There is no comprehensive record of collective bargaining agreements to enable us to carry out a full investigation into their terms and conditions. However, we are aware that these agreements generally do not contain any anti-discrimination provision. In fact on the contrary, certain collective agreements regulating the conditions of work in specific sectors of the economy which are almost exclusively operated by migrants contain terms which are less favourable for the workers than in other collective agreements. Such was the case investigated by the Equality Body following a complaint from a Bulgarian worker whose salary and other benefits were reduced following the renewal of the collective agreement. The equality body reviewed the collective agreement and found it to be discriminatory on the ground of race/ ethnic origin⁶⁶ (in the case of

⁶⁵ Case AKI 5/2005 17.5.2008.

⁶⁶Case AKI 5/2005 17.5.2008. Cyprus/ The Combating of Racial and other forms of discrimination (Commissioner) Law N. 42(I)/2004, articles 6 and 9(b); Revised European

the complainant it was reduced it almost by half). Although the Ministry of Labour argued that no discrimination existed because the collective agreement applied to both Cypriot and foreign workers, the Ministry itself accepted the fact that the agricultural sector employs almost exclusively migrant workers. In addition, the investigation of the equality body showed there were at least two notes from the Ministry regarding this collective agreement which they described as regularisation of the employment of migrant workers in agriculture. The Equality Body found that collective agreements are subject to scrutiny for compliance with the principle of equality both by the court and by itself and refers to a long list of national and international laws, including I.L.O. Conventions, the Revised Social Charter and the national laws transposing the anti-discrimination directives which expressly provide for equal treatment of migrant workers in terms of salary and benefits. The decision criticised the insistence of the agricultural organisations, as evidenced in the documents found in the Ministry's file, to reduce the salaries of migrant workers as a means of alleviating the problems of the industry and found that this cannot be done by reducing human rights; it further declared that there is no public interest of the host population, but a general public interest which is not served by violating human rights. Finally the decision found that the collective agreement obviously targeted migrant workers offering a different treatment than that afforded to Cypriots, which is by itself discriminatory, but it also provided for reduced pay and benefits for migrant workers. The report invites the parties to the collective agreement to consultation, as the law provides, in order for a final decision to be issued.

- [70]. In line with the above decision, the Third ECRI Report on Cyprus also points to the possibility of indirect discrimination against non-EU workers “when collective agreements stipulate unreasonably disadvantageous conditions for sectors mainly operated by these workers” (para.71).

5. Sanctions, Compensation, Mediation and Legal Consequences

- [71]. Legal and natural persons may apply to the Courts or to the Equality body claiming discrimination. Article 7(1) of Law N.59(I)2004 and

Social Charter 1996, article 19; Charter of Fundamental Rights of the European Union, article 15.3; Cyprus/ The Equal Treatment in Employment and Occupation Law N.59(I)/2004 articles 4(c) and 6(a)(b).

Article 11 of Law N. 58(I) provide that any physical or legal person who considers that he/she has been discriminated on the prohibited grounds may apply to the competent courts (i.e. Labour Tribunal, District Court or Supreme Court) depending on the subject matter and the procedure of each the case, or to the Equality body. The fines which the Court may impose vary depending on whether the perpetrator is a legal or natural person. Natural person may be fined with up to 4,000 Cyprus pounds (6,835 Euros) and/or six months imprisonment or both.⁶⁷ If a legal person is found guilty of discrimination, the managing director, chairman, director, secretary or other privileged officer of the legal personality or organisation shall be held guilty for the actions of the legal person and fined with up to 4,000 Cyprus pounds (6,835 Euros) and/or six months imprisonment or both, if it is established that the offence is committed with their consent or collaboration or mere tolerance. In addition, the legal person can be fined up with up to 7,000 Cyprus pounds (11,962 Euros). There is also a provision for ‘gross negligence’ with fines up to 2,000 Cyprus pounds (3,417 Euros) for individuals and 4,000 Cyprus pounds (6,835 Euros) for legal persons.

[72]. The Equality Body is empowered to impose small fines,⁶⁸ to issue recommendations to the person against whom a complaint has been lodged, and to supervise compliance with orders issued against persons found guilty of discrimination.⁶⁹ However, all orders, fines and recommendations issued or imposed by the Equality Body under this Law are subject to annulment⁷⁰ by the Supreme Court of Cyprus upon an appeal lodged by a person with a ‘vested interest’⁷¹.

⁶⁷ Cyprus/ Law on Equal Treatment in Employment and Occupation N.58(I)/2004 (01.05.2004), Article15; Cyprus/ Law on Equal Treatment Irrespective of Racial or Ethnic Origin N.59(I)/2004 (01.05.2004), Article13.

⁶⁸ The fine to be imposed cannot exceed CYP350 for discriminatory behaviour, treatment or practice [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 18(a)], CYP250 for racial discrimination in the enjoyment of a right or freedom [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 18(b)], CYP350 for non-compliance with the Commissioner’s recommendation within the specified time limit [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 26(1) (a)] and CYP50 daily for continuing non-compliance after the deadline set by the Commissioner [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 26(1) (b)]. Generally speaking, the fines are considered to be very low.

⁶⁹ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 24(1).

⁷⁰ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 23.

⁷¹ Term used in Section 146 of the Cyprus Constitution, which sets out the procedure for appeal to the Supreme Court of Cyprus.

- [73]. The reversal of the burden of proof, although a powerful tool in the hands of victims and the organisations representing them, has not so far been utilised, as no case has been adjudicated in court.
- [74]. When the Race Equality Directive was transposed in 2004, the provision on the reversal of the burden of proof did not comply with the Directive. A subsequent amendment to the laws transposing the Directive had the effect of extending the principle of reversal of the burden of proof in order to cover judicial proceedings as well as proceedings before the Equality Body. Strangely enough, however, the amendment expressly extends the reversal of the burden of proof to organisations engaged in judicial proceedings as well as in proceedings before the Ombudsman, presumably meaning the Ombudsman in her capacity as the designated specialised body. In effect therefore, the burden of proof is impliedly reversed in the procedure before the specialised body but only if the complainant is an organisation with a legal standing and not where the claimant is the victim himself/herself.
- [75]. In practice, there is no effective system of properly following up the extent to which the findings of the investigations are properly complied with once the Equality Body has ruled on the matter. The practice is that officers of the Equality Authority would contact the relevant authority seeking assurance they there was compliance. In fact, it is not possible to find out subsequent behaviour, after compliance with the decision in a particular complaint. It may be the case that the same institution in a similar circumstance continues to discriminate: this is discovered if there other subsequent complaints as is the case with the complaints against the Police, Immigration Authorities or with certain professional bodies who indirectly discriminate against EU nationals who want to register and practice in those professions such as language requirement in the documents required for registration of foreign nationals in the registry of building contractors.⁷² This is one of the problematic elements in the approach taken by the Equality Body, which chooses not to make its decisions binding. Arguably, there may have been some reasons for not imposing sanctions in the first year after the transposition of the EU directive, in order to give an opportunity to authorities and the public to get to know the functions and powers of the Equality Body, although five years after transposition still no sanctions have been imposed. The explanation offered by the Equality Body itself is that the fines prescribed by law are so insignificant that they can hardly act as a deterrent, whilst the mediation role it has assumed is likely to bring more results. Moreover, the failure in making its decisions

⁷² File No. AKR 36/2006, dated 23.02.2007

binding, preferring instead to make some general recommendations of an advisory nature may result in public and private institutions not taking seriously the recommendations and therefore continue to discriminate. Nonetheless, it has to be recognised that there may be policy considerations for the failure to make the decisions binding: it is likely the Ombudsman, in her capacity as Equality Body, considers that public authorities may not comply with the decisions and face losing credibility. This was indeed the case with the investigation into complaint over a circular by the Ministry of Education, which the Equality Body considered to be an illegal and racial discriminatory act, but she was over-ruled by the Council of Ministers.⁷³

- [76]. Following the issue of a report containing recommendations, the Equality Body sends letters to the party to whom recommendations were issued, in order to check compliance. Investigations as a result of complaints or using the self-initiation powers are made on an ad hoc basis, even when there are references to previous cases in subsequent complaints to the Equality Body. There is no publically debated or declared plan for specific action to meet specific goals and targets in a given timetable. Moreover, there is no specialised or designated unit within the Equality Body to develop a long-term policy strategy, or to follow up matters, to monitor implementation and compliance, or responsible for long-term targeted campaigns. All officers are over-loaded with casework, not only with the Equality Body caseload but with Ombudsman's issues.
- [77]. An instance of this is the investigation into an allegation of racism in football,⁷⁴ which did result in the Cyprus Football Association taking some action. However, it is highly debateable whether the action was the actual result of the Equality body investigation or the international embarrassment and stricter legal regime imposed. In any case, the Equality Body investigation was certainly useful for awareness-raising but it fell short making its decision binding or imposing any sanctions on teams, organisations or individuals which persistently continue in their racist behaviour.⁷⁵
- [78]. A rare occasion where there was a declaration that there will be a follow up was recently, when the Minister of Education, declared

⁷³ N. Trimikliniotis and C. Demetriou (2005) *National Annual Report 2005 – Cyprus*, National Focal Point for Cyprus for RAXEN NETWORK, EUMC.

⁷⁴ AKP 4/2004, 24.12.2004, Έκθεση της Αρχής κατά του Ρατσισμού και των Διακρίσεων αναφορικά με την εκδήλωση ρατσιστικών συμπεριφορών κατά την διάρκεια ποδοσφαιρικών αγώνων.

⁷⁵ For details see N. Trimikliniotis & C. Demetriou (2009) *Preventing racism, xenophobia and related intolerance in sport across the European Union: RAXEN Thematic Study on Cyprus*, March 2009, RAXEN Report.

that the recommendations of the Equality Body Report will be implemented following a racial attack on a Cypriot black female pupil.⁷⁶ This was an investigation into a complaint received from an NGO regarding the attack against a Cypriot black female pupil by a group of about 40 other Cypriot white pupils following a volleyball match between her school and another school.⁷⁷ No arrests were made and no charges were brought against anyone by the time of issue of the Equality Body's report, three months after the incident. The police who initially refused to accept a statement from the victim's father, subsequently agreed to do so following the Equality Body's intervention. After emphasising once more⁷⁸ the inadequacy of the system of recording racist incidents maintained by the police who clearly make an underestimation of the problem, the report refers to decisions of the ECtHR⁷⁹ and to ECRI recommendations on recording racist incidents on the one hand⁸⁰ and on anti-racist education on the other hand.⁸¹ The report falls short from recommending concrete measures to be taken in order to address this and other incidents of racist violence, despite its emphasis on the growing tendencies of the phenomenon. In that vain, the report accepts the setting up of the monitoring mechanism promised by the Minister of Education as exhaustive of the measures that may be taken. In addition, although the report hints on the fact that teachers essentially disregard state policies over the handling of racist incidents and apply their own decisions, it does not recommend any measures to be taken against the teachers. This is a wider problem facing Cypriot society in recent months, where the leadership of the teachers' unions are openly opposing the government's efforts for comprehensive educational reform towards multicultural education and go as far as issuing decisions contradicting the circulars issued by the Ministry of Education. Whether there will be follow up activity or not remains to be seen in the future, but so far the Ministry has expressed willingness to take firm action.

[79]. An illustration of the failure to properly follow up investigations in any manner other to check compliance is the fact that the surveys

⁷⁶ Decision Reference number AKR 241/2008, dated 10.03.2009.

⁷⁷ The attack took place in December 2008 when the victim tried to defend one of her co-players in the match and was then attacked by pupils of the other school shouting racist insults. The victim was severely injured and had to be taken to hospital.

⁷⁸ Similar comments were made by the Equality Body in previous reports: Ref. AKR 37/2005, dated 11.07.2005; Ref. AKR 7/2006, dated 01.08.2007; and Ref. AKR/AYT 2/2008, dated 26.01.2009.

⁷⁹ *Bekou & Koutropoulou v. Greece* where Greece was found guilty of not adequately addressing the racial motive involved in an attack against a group of Roma

⁸⁰ ECRI General Policy Recommendation No 11 on combating racism and racial discrimination in policing.

⁸¹ ECRI General Policy Recommendation No 10 dated 15 December 2006.

conducted by the by the Equality Body did not result in any follow up activity such as code of practice or any plan to redress the discrimination uncovered.

- [80]. In those cases where there have been follow up activities these do not as a rule lead to any sanctions and/or compensation payments. The absence of any sanctions for racial discrimination is followed by the complete failure to compensate victims of racism. The reasons are apparent: the general climate of denial, despite the authoritative reports and the abundance of research and monitoring that there is widespread racial and ethnic discrimination in Cyprus. All major studies on migration point to the same conclusion: that migrants remain in ‘a vulnerable position’, as the Second ECRI Report on Cyprus⁸² described them, in spite the improvements of the institutional and legal framework, as the Third ECRI Report on Cyprus. Moreover, the Third ECRI Report on Cyprus refers to ‘manifestations of racism and discrimination affecting Turkish-Cypriots’. Other studies record evidence of racial discrimination against migrant workers, as well as Turkish-Cypriots working in the southern territory under the control of the Cyprus Republic (para. 82) and the few Roma, who reside in the south (para. 83).⁸³ Other research conducted in the last ten years ago reached similar conclusions as to the seriousness of problem of racism in Cyprus,

⁸²The Second Country Report of the European Commission against Racism and Intolerance made abundantly clear the need urgent action: excessive violence by the police; immigration offices abuse their discretion; public figures remarks that lead to a xenophobic climate all of which cause the ‘vulnerable position of migrants’. See ECRI (2001) *Second Report on Cyprus*, European Commission against Racism and Intolerance, Council of Europe, Strasbourg, 3 July 2001.

⁸³See Trimikliniotis, N. (2009), *Ρατσισμός, Εργασία και Μετανάστες σε μια Μετα-τουριστική Χώρα: ένα Νέο Εργασιακό και Μεταναστευτικό Υπόδειγμα και η Ανανέωση του Κυπριακού Συνδικαλισμού* [*Racism, Labour and Migrants in a Post-Tourist Society: toward a new employment and migratory paradigm and the renewal of Cypriot trade unionism*] (Forthcoming).

illustrating how racialisation was endemic in media,⁸⁴ employment,⁸⁵ education⁸⁶ and racial stereotyping amongst the youth.⁸⁷

- [81]. The sanctions actually issued in Cyprus in cases of racial or ethnic discrimination are not effective, proportionate and dissuasive. It ought to be recalled that the Equality Body is empowered to impose small fines,⁸⁸ to issue recommendations to the person against whom a complaint has been lodged, and to supervise compliance with orders issued against persons found guilty of discrimination.⁸⁹ The Courts however have wider powers which go beyond the fines, as set out in paragraph 71 above, to include imprisonment of up to six months.

⁸⁴See Trimikliniotis (1999) “New Migration and Racism in Cyprus: The Racialisation of Migrant Workers”, chapter in book edited by Anthias, F. and Lazarides, G. Title: *Into the Margins: Migration and Exclusion in Southern Europe*, Ashgate, Avebury, pp. 139-178.

⁸⁵ See RAXEN Country Reports (2004-2008); N. Trimikliniotis (1999) “New Migration and Racism in Cyprus: The Racialisation of Migrant Workers”, chapter in book edited by Anthias, F. and Lazarides, G. Title: *Into the Margins: Migration and Exclusion in Southern Europe*, Ashgate, Avebury, pp. 139-178; Trimikliniotis and P. Pantelides (2003) ‘Mapping Discrimination in Cyprus: Ethnic Discrimination in the Labour Market’, *The Cyprus Review*, Vol. 15, No.1, Spring 2003, pp. 121-148; N. Trimikliniotis and C. Demetriou (2007) ‘Cyprus’, In: A. Triandafyllidou, and R. Gropas (ed.) *European Immigration: A sourcebook*, Avebury: Ashgate, pp.45-58.

⁸⁶See RAXEN Country Reports (2004-2008); N. Trimikliniotis (2004) ‘Mapping Discrimination in Cyprus: Ethnic Discrimination in a Divided Education System’, *The Cyprus Review*, vol. 16:1, Spring 2004, pp. 53-86; and N. Trimikliniotis and C. Demetriou (2006) *RAXEN Country Report*; N. Trimikliniotis and C. Demetriou (2007) ‘Cyprus’, In: A. Triandafyllidou, and R. Gropas (ed.) *European Immigration: A sourcebook*, Avebury: Ashgate, pp.45-58.; 2008; E. Papamichael (2008) ‘Greek Cypriot Teachers’ Understandings of Intercultural Education in an Increasingly Diverse Society’, *The Cyprus Review*, Special Issue on *Migration, Racism and Multiculturalism in Cyprus*, Vol. 20, No. 2 Fall 2008, pp.51-78.

⁸⁷ See for instance K. Charakis, A. Sitas, (2004) “Racist Tendencies Among Cypriot Youth 1999-2001”, *The Cyprus Journal of Science and Technology*, No. 2, 2004, Frederick Research centre, Nicosia, p.155; K. Charakis, A. Sitas, K. Sotiriades, L. Demetriou, E., Alexandrou, E. (ed. K. Charakis) (2005) *Αντικοινωνική Συμπεριφορά των Νέων της Κύπρου - Ρατσιστικές Τάσεις*, Athens: Sakoulas. Also, there was a quantitative study of the Centre of the Study of Childhood and Adolescence which showed a serious problem with Greek-Cypriot children’s perceptions of and attitudes towards a variety of foreigners who live in Cyprus with racist stereotypes. See S. Spyrou (2005) *Greek-Cypriot children’s familiarity with, knowledge about, perceptions of and attitudes towards a variety of foreigners who live in Cyprus*, Centre of the Study of Childhood and Adolescence 2005.

⁸⁸ The fine to be imposed cannot exceed CYP350 for discriminatory behaviour, treatment or practice [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 18(a)], CYP250 for racial discrimination in the enjoyment of a right or freedom [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 18(b)], CYP350 for non-compliance with the Commissioner’s recommendation within the specified time limit [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 26(1) (a)] and CYP50 daily for continuing non-compliance after the deadline set by the Commissioner [Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 26(1) (b)]. Generally speaking, the fines are considered to be very low.

⁸⁹ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 24(1).

[82]. The courts and the Equality body have failed to impose the kinds of sanctions that reflect the seriousness of racial discrimination in society. The ECRI Reports on Cyprus (2001 and 2006) notes the problems of racism in Cyprus persist as well a plethora of research on the subject, yet this is not reflected in the sanctions and measures taken. There has been no case of conviction that imposed criminal sanctions for racist crimes. The handling of a serious case of racial violence against Turkish-Cypriots students at the English School in November 2006 is indicative of the practice of the Prosecution and the Attorney General's office.⁹⁰ A physical attack by a group of hooded youth against the Turkish Cypriot pupils attending a school in the Republic controlled area was taken to court but no charges were brought against the perpetrators for offences involving racist motive. The charges concerned 'unlawful assembly', 'conspiracy to commit an offence', 'breach of peace' and other charges unrelated to racial motivation, although it was clear that the Turkish Cypriot pupils were attacked due to their ethnic origin and even though the mechanism of recording racial incidents operated by the police recorded this a racial incident.⁹¹ The sanctions imposed by the Court were a few hours of community service to each attacker. Similarly, an attack against a group of Sri Lankan migrants in a Limassol village on 08.06.2008 by 30 or so Cypriot youth using sticks and metal bars, hitting them on the head and calling them names did not lead to any prosecutions for offences involving racist motive.

[83]. **Case:** The Equality Body carried out a self-initiated investigation into the handling by the police of a group attack against migrants which was reported in the press and which was manifestly racial. The attack took place in June 2008 in a rural area and most of the perpetrators were aged between 14-18. According to the attacker's own statement to the police, the attack came as a revenge for an alleged attack the previous night against a Greek Cypriot by two Polish men, which led the attackers to hit any person of migrant origin they found in the street who fled without reporting the incident to the police. The incident was reported to the police by a number of British persons who rushed to the rescue of the migrants and who were attacked themselves by the youth, whose number had meanwhile grown and who equipped themselves with stones and iron bars, causing considerable damage to homes of migrants and to the property of the British people who run to their rescue, shouting racial

⁹⁰ For more details see *RAXEN National Data Collection Report 2007- Cyprus*. Also for an analysis of the incident, its political and policy repercussions, see 'Η Κύπρος αντιμετωπίζει με τον ρατσισμό και εθνικισμό στα σχολεία: Πόσο σοβαρό είναι το πρόβλημα και τι κάνουμε;» ['Cyprus faced with racism and nationalism in the schools: how serious is the problem and what is to be done'], *Περιπέτειες Ιδεών*, Τεύχος 8, *Πολίτης*, (30.12.2006).

⁹¹ Letter to the authors TAE/432/1(III) dated 17/05/2007.

remarks and injuring several of them. The perpetrators were charged with offences related to common assault, malicious damage to property and riot, which do not involve racial motive.

- [84]. An investigation by Equality Body's showed that the Police Department for the Combating of Discrimination (PDCD) whose mandate was extended on 11.02.2008 following the Equality Body's recommendation, to cover and record not only racial *offences* but also racial *incidents* (as defined inter alia by the victim), does not have any mechanism in place to record racial *incidents*; only a small number of racial *offences* were recorded⁹² none of which led to any conviction. This is, according to the Equality Body, evident of the role of the police in handing the investigation and the criminal procedure. It also emerged from the investigation that the system of recording racial offences is such that, unless the investigating officer chooses to classify an offence as racial, the PDCD is not informed of the incident at all. The head of the PDCD admitted that no special training is offered to police officers on the identification and recording of racial motive and expressed the view that the change of mentality within the police body will come gradually through experience. The limited activity of the PDCD was attributed to its serious under- staffing and its wide mandate which covers at the same time two more departments (violence in the family and youth delinquency). The Head of the PDCD informed the Equality Body that in the particular case under investigation there did not seem to be a prima facie case of offences in violation of the anti-discrimination legislation, a view which was criticised in the report. The Equality Body referred to the Second and Third ECRI reports on Cyprus of 03.07.2001 and 16.05.2006 respectively which noted that the legislative provisions relating to racism are not adequately implemented, that awareness of these laws is low amongst legal circles and the public at large, that the police is not adequately trained to identify and address racial motive, that racial crime is not adequately recorded and that the bodies involved in the criminal justice process are not adequately aware of the need to address racism. Reference was also made to the ECtHR decision in *Bekou & Koutropoulou v. Greece* where Greece was found guilty of not adequately addressing the racial motive involved in an attack against a group of Roma, as well as to the reports of the European Union Agency for Fundamental Rights where the data collection carried out by Cyprus appears to be inadequate. The Equality Body concludes that the incident under investigation is not an isolated one and that there is an increase in the number and intensity of racial incidents. It notes that previous investigations have also shown the failure of the

⁹² Two incidents were recorded in 2005, eighteen in 2006 and three in 2007.

police to prosecute racial incidents, adding that although the legislative framework appears to be adequate, the authorities stubbornly refuse to prosecute racial incidents reported by victims or by NGOs or appearing in the media. The report notes with concern the fact that in the incident under investigation the migrants attacked did not file a complaint with the police, which indicates that vulnerable groups feel discouraged from reporting racial incidents for fear of deportation or for lack of trust in the police. At the same time, the underreporting phenomenon shows a general failure of the existing system to record the real picture of racism in Cyprus. The Equality Body recommends the following measures: the precise and credible recording of racial incidents; the provision of assistance and protection to victims and their encouragement to report incidents; the upgrading of the PDCD and its adequate staffing; the training of police officers on the identification and handling of racial incidents. Although this is not the first time that the Equality Body finds that the police has failed to address and prosecute racist crime, the report does not identify this practice as discriminatory in itself and restricts its criticism in the area of lack of efficiency. Also, the failure of the Attorney General and the Legal Service to take a more active role in the prosecution of racial incidents is not addressed by the Equality Body.

[85]. Another issue of the concern is the fact that there has been no sanction imposed by the Equality body in discrimination cases on the grounds of race or ethnic origin. To a large extent there has been compliance by most public authorities, or at least the authorities have indicated that would comply with the findings even if these findings are not legally binding. However, there are authorities who persistently fail to comply with the finding of the Equality Body and to this day fail to take into account the findings: in fact these are the authorities at the hands of whom the most (racial/ethnic) vulnerable groups suffer most, the Police and the Immigration authorities, as research shows.⁹³

[86]. The Equality body plays an important *mediation* role in discrimination cases on the grounds of race or ethnic origin in Cyprus. However, this does not take place against a background of an established legal practice, especially an established and credible sanction policy in Cyprus, in discrimination cases on the grounds of race or ethnic origin. The interests of the victims, especially

⁹³ See N. Trimikliniotis (2005) “Discriminated Voices - Cyprus Report”, Work Package 2, *The European Dilemma: Institutional Patterns and the Politics of ‘Racial’ Discrimination*, Research Project Xenophob, EU Fifth Framework Program 2002-2005. K. Charakis (ed.) (2005) *Αντικοινωνική Συμπεριφορά των Νέων της Κύπρου - Ρατσιστικές Τάσεις [Antisocial behavior of the youth in Cyprus - racist tendencies]*, Athens: Sakoulas.

compensation, are not sufficiently protected in mediation: victims are very rarely, if ever, compensated. In some cases victims are happy to have some immediate redress, but in others they are left with no compensation or essential remedy. Most victims of discrimination are not sufficiently informed and are not aware of their alternative legal possibilities during mediation. Unless there is a complaint by a lawyer or NGO, no one represents the interests of the victims of discrimination during mediation procedures. The outcomes of mediation procedures are not publicly known. There is no way of assessing if the outcomes of mediation effective, proportionate and dissuasive: we can only say that the problem of racial and ethnic discrimination by public authorities and professional bodies is widespread, as the complaints are hardly diminishing and various research projects show.

6. Rights Awareness

[87]. There are no surveys focusing on the level of awareness of the anti-discrimination laws in the population or amongst social groups. The only survey addressing inter alia the question of awareness of anti-discrimination laws was the survey commissioned by the Equality Body in 2007 on the perceptions of Greek-Cypriot regarding persons of other religions, also referred to in paragraph 39 above. The survey has shown that the majority do not know that laws exist in Cyprus prohibiting discrimination when hiring new employees on the basis of someone's religious beliefs. Ignorance on this is strong even among citizens belonging to the higher socio-economic category (which includes most employers). Only 41% of them are aware of the existence of these laws.

[88]. It should be commented also that among the age group of 18-24 years old, only 12% know the existence of such laws

7. Analysis of Deficiencies

[89]. In order to appreciate the general protection from race or ethnic discrimination, this must be understood against the backdrop of the legacy of absence of a strong legal and political tradition in combating discrimination and the fact that all other social issues were subsumed in the national issue: ethnic conflict, political violence and suspension of the constitutional rights of Turkish Cypriots under the "doctrine of necessity" have created an uneven and under-developed system that can be considered inadequate. The continuous, if not rigorous, application of the 'doctrine of necessity'

by both government and courts engenders a legal vacuum within which several discriminatory policies are established and practiced.⁹⁴

[90]. The rigorous bi-communalism of the Republic, the role of religion in the education system and the recognition afforded to the ‘established’ religious groups shows little societal tolerance of other religions, particularly those which engage in proselytising. In the past, Jehovah’s Witnesses have particularly been the target of discrimination. Cypriot authorities prosecute conscientious objectors, as in the case of Jehovah’s Witnesses⁹⁵ because they refuse to perform reservist army exercises. Nothing short of a comprehensive solution to the Cyprus problem can effectively and decidedly address these issues.

[91]. The main gap in the law relates to the duty⁹⁶ to ensure that discriminatory laws and provision contained in contracts, collective agreements, internal rules of undertakings or rules governing independent occupations and professions and workers and employers’ organisations, are repealed⁹⁷ and it is the researchers’ view that the current procedure fails to comply fully with Directives. There is no procedure for continuous reviewing of existing legislation for the purpose of assessing compatibility with the anti-discrimination directives. The process of reviewing laws and regulations appears to be triggered off only when a complaint is filed with the Equality Body. However, even in those cases where the Equality Body found that a law or regulation was discriminatory and had to be repealed, and such decision was notified to the Attorney General to prepare the relevant bill, the case never got any further. The end result is that a list of laws and regulations which the Equality Body found to be discriminatory are awaiting action from the Attorney General for several years now. Meanwhile, they continue to be in force. This is a gap that needs to be addressed with amending legislation, providing for the suspension of the discriminatory provisions pending their formal repeal.

⁹⁴These operate mostly against Turkish-Cypriots mostly e.g. failure to use Turkish as an official language of the Republic of Cyprus; discrimination against Turkish-Cypriots in access to property and various other constitutional rights; the violation of Greek-Cypriot rights by Turkey and a certain tendency of the authorities and the courts to “seek revenge”

⁹⁵ Some of them have been convicted and imprisoned.

⁹⁶ As required by Directive 43/200/EC, Article 14.

⁹⁷ Article 16(1) The Equal Treatment in Employment and Occupation Law No. 58 (1)/2004 (31 March 2004) and Article 10(1) The Equal Treatment (Racial or Ethnic Origin) Law No. 59(I)/2004 (31 March 2004).

- [92]. Dialogue with social partners and NGOs⁹⁸ and the obligation to bring all anti-discrimination provisions to the attention of the persons concerned⁹⁹ have been lacking and a great deal more could be done for the dissemination of information to the discriminated groups themselves.¹⁰⁰
- [93]. The apparent reluctance of successive governments to allocate human and financial resources to the Equality Body to allow it to cope with the increased volume of work it faces has led to delays in responding to urgent situations and to the non-utilisation of an important part of the Equality Body's mandate relating to the issue of codes of conduct, to data collection and to research and surveys. The lack of resources is also the reason why little or no measures have been taken in order to bring to the attention of vulnerable groups (members of the Turkish-Cypriot community, the Roma, the Pontians, migrant workers and asylum seekers) the new legal developments and complaint procedures open to them. Currently, five years after the setting up of the Equality Body this does not have its own website and the Ombudsman's website continues to be displayed only in Greek.
- [94]. The sanctions within the Equality Body's mandate are too weak to act as effective deterrents.
- [95]. Apart from limited and short-term financing provided by EU projects like EQUAL or ERF, there is no public or private funding available for anti-discrimination NGOs, which renders their sustainability very difficult in terms of infrastructure and personnel, and prevents the development of skills, expertise and professionalism. There is also no regular consultation process in place between the government and NGOs.
- [96]. Awareness of anti-discrimination laws amongst the legal profession is very low and there is an apparent unwillingness by its members to undergo training. As a result, litigation is not used sufficiently, partly

⁹⁸. Directive 43/200/EC, Preamble paragraph 23. During the drafting of the various National Action Plans, the trade unions were consulted but were neither informed whether any or all of their proposals were accepted or not, nor were any reasons given; they viewed the final National Action Plans published. The only NGO dealing with racism and racial exclusions at the time (KISA) was not consulted in the formation of National Action Plans (for Employment, Social Inclusion, and Education).

⁹⁹. Directive 43/200/EC Article 10. Although Turkish is one of the two official languages of the Cyprus Republic, none of the new instruments (or indeed any former ones or even the Official Gazette) are translated into Turkish, thus rendering it difficult for members of the Turkish-Cypriot community to be informed about and utilise the new procedures available. No alternative means are used, for example Braille, to inform disabled people of non-discriminatory measures.

¹⁰⁰. As provided by Directive 43/200/EC, Article 12.

due to the cost and length of time involved and partly to the lack of awareness of new laws among the legal profession. Given the fact that the Equality Body's decisions have so far been mere recommendations, victims of discrimination are, in practice, not afforded the mandatory legal protection foreseen in the Race Equality Directive.

- [97]. There is no law explicitly providing that an authority's failure to act on complaints of discrimination amounts to discrimination or imposing a general anti-discrimination public duty on authorities. Many complaints directed against various governmental departments are simply not addressed or dealt with, resulting in no consequences for the departments concerned and serious instances of discrimination go unpunished. This is a matter that needs to be addressed with legislation obliging public authorities to take measures to address complaints of discrimination.
- [98]. The recent emergence of anti-immigrant and ultra nationalist far right groups has not been addressed by the government. There are no convictions against perpetrators in cases of racist attacks and there is a reluctance on the part of the police as well as other policy makers to recognise the existence of racist motive.
- [99]. Although the Equality Body generally takes a positive and courageous stand regarding some issues (e.g. immigrants' rights), it is very reluctant to address discrimination against Turkish Cypriots and adopts the governmental position of endorsing the 'doctrine of necessity', hence denying Turkish Cypriots their constitutional rights by invoking a court decision of 1964. The Equality Body also appears reluctant to take up issues of anti-Turkish public discourse in the media, particularly when this is expressed by politicians (there are complaints pending since 2004). A more courageous and impartial approach is needed by this Body, which effectively is the only institution that can pursue issues of discrimination against the most vulnerable of victims, given the failures of the court system.
- [100]. It is the authors' view that unless anti-discrimination enters the school curriculum, the process of developing a culture and tradition without prejudice will be inept and slow.

8. Good Practice

- [101]. The extended mandate of the Equality Body, detailed in paragraph 20 above, which enables it to investigate complaints of discrimination on grounds well beyond the Race Equality Directive, and particularly those grounds covered by

international conventions, have enabled this institution to have a meaningful intervention in the areas of asylum, immigration, conditions of detention of third country nationals and Turkish Cypriots, sex trafficking and many more issues which are not covered by the Race Equality Directive. Even though the small fines which the Equality Body can impose cannot serve as a deterrent, the Equality Body's observations and recommendations since its inception in 2004 have changed the terms of the debate and have contributed to a turn in public opinion and in the media towards a human rights approach, whilst in previous years the discourse was dominated by anti-immigration feelings and arguments in favour of state sovereignty.

- [102]. A legal precedent was established by the Supreme court in the case of *Yiallourou v. Evgenios Nicolaou* that constitutional rights are actionable per se.¹⁰¹ In this case, the Director of the Nicosia Sewerage Board sued the civil engineer of the Board for damages for having tapped his telephone for a whole year, which violated his right to privacy and confidentiality of communication under articles 15 and 17 of the Cypriot Constitution. No material damage was proved and the District Court awarded general damages. Upon appeal to the Supreme Court, the first instance decision was upheld. This decision opens the way for legal action against the state or against the private sector for discrimination on the basis of Article 28 of the Constitution, which covers grounds relevant to race/ethnic origin but not included in the laws transposing the Race Equality Directive, such as community, language, national or social descent, birth, colour, wealth or "any ground whatsoever" (Art. 28.2).

9. Miscellaneous

- [103]. The case of *Cresencia Cabotaje Motilla v. Republic of Cyprus through the Interior Minister and the Chief Immigration Officer*¹⁰² decided by the Supreme Court in 2006 continues to be the cause for denying thousands of migrant workers the rights emanating under Directive 2003/109/EC for the status of long term migrants. In this case, the applicant was a female migrant who arrived in Cyprus in 2000 and was since lawfully working as a domestic worker. On 25.1.2006, i.e. as soon as the deadline for the transposition of

¹⁰¹ Cyprus/ Supreme Court / Appeal No. 9331 (08.05.2001).

¹⁰² Supreme Court Case No. 673/2006 (21.01.2008).

Directive 2003/109/EC expired, the applicant applied to the Interior Minister for the status of the long term migrant, as provided by the Directive. Although the said Directive was not transposed into Cypriot law until 14.02.2007 (Law 8(I)/2007), the Court accepted that, based on the ECJ decision on the case of *Pubblico Ministero v. Tullio Tatti*, the said application had to be examined in light of the said Directive and the law which subsequently transposed it. The Interior Minister rejected the applicant's application to acquire the right of long term residency, on the ground that the applicant's successive residence permits were limited as to their duration. The Ministry's decision was based on article 18Z(2) of the Aliens and Immigration Law Cap 105, as amended by Law 8(I)/2007 purporting to transpose Directive 2003/109/EC, which excludes from the scope of the law persons, inter alia "persons whose residence permit has been officially restricted as regards its duration". The aforesaid provision was intended to transpose Directive article 3(2)(e); however whilst the Directive states "persons whose residence permit has been formally limited", the Cypriot law states "persons whose residence permit has been formally limited *as to its duration*." The applicant applied to the Supreme Court appealing against the said decision of the Interior Minister. The Supreme Court, by a majority decision of nine judges against four, rejected the appeal and confirmed the Interior Minister's decision, on the ground that the fixed term duration of the applicant's visas did indeed fall within the exception of article 18Z(2) of the Cypriot Law Directive article 3(2)(e). The decision noted that the transposition of the Directive and the addition of the phrase "*as to its duration*" did not deduct from the effectiveness of the Directive and that the fixed term nature of the residence visas granted to the applicant did not create a reasonable expectation "that the person has put down root in the country", as provided by the Directive Preamble article 6. In their dissenting opinion, four judges stated that the addition of the phrase "as to its duration" fundamentally transform the essence of the exception provided for in Directive article 3(2)(e), since it is clear that the intention of the Directive is to exclude persons residing in the EU temporarily or on a permit which has been limited for a specific purpose, a fact evident by the examples given in the Directive article itself. The dissenting opinion further states that the term "formally limited" used in Directive article 3(2)(e) refers to the temporary nature of a stay not related to its duration but rather to the nature of the status or the profession of the person concerned, adding that it is not up to each member state to interpret this provision in a way that alters the spirit of the Directive, in order to suit its particular immigration policy. The dissenting judges found that the fact that certain migrants are on a fixed term visa is insignificant and does not alter the fact that they have a reasonable expectation for a longer residence, since the Directive requires merely lawful residence and

not even the issue of a residence permit, clarifying that it is the length of the stay that creates the reasonable expectation. Also, the dissenting judges referred to a conference of experts which took place in Brussels between 7-8.07.2005 where it was stated that the said exception should be interpreted restrictively (*eiusdem generis*) and in accordance with the examples given in the Directive (i.e. seasonal workers, volunteers, posted workers etc) and that the mere fact that a residence permit is of fixed duration does not place it within the exception of the Directive.¹⁰³ The judges did not seek the opinion of the ECJ on the matter.

- [104]. The decision has affected tens of thousands of migrant workers who are, as a matter of policy, issued with fixed term residence visas and whose applications have since this decision remained frozen.
- [105]. The decision essentially confirms the practice followed by the immigration authorities even prior to this decision, by which the applications of all migrants residing in Cyprus on a temporary visa, which is the vast majority, were a priori rejected. The case is important because, when seen against the backdrop of the delay on the part of the immigration authorities to present a bill transposing Directive 2003/109/EC, the high number of deportations that took place in the meantime,¹⁰⁴ the Equality Body's repeated decisions against the immigration authorities for racist and discriminatory treatment of migrants and for unwarranted and unlawful deportations, a pattern of racist practices on the part of the immigration authorities emerges. It is this pattern that a bill introduced by an opposition MP sought to address, when he proposed an amendment to the immigration law, which had recently been amended to transpose Directive 2003/109/EC.¹⁰⁵ The bill

¹⁰³ This decision was widely reported in the media, since it essentially "freezes" the opportunities of the vast majority of the persons entitled to acquire the long term residency, who are on a fixed duration visa. The decision was heavily criticised by human rights NGOs (press release of KISA dated 22.01.2008); a protest which was spontaneously held against this decision on 27.01.2008 led to violence by the police, to the arrest of a migrant rights supporter and to the rushing into hospital of a female migrant because of shock (KISA press conference 28.01.2008).

¹⁰⁴ In her annual report for 2006, which was drafted before any of the above problems arose, the Ombudsman refers to a large number of complaints received by her office regarding the delay by the Interior Ministry to transpose Council Directive 2003/109/EC and the measures of arrest and deportation adopted in the meantime by the immigration authority against migrants residing in Cyprus for a long time. The Ombudswoman reports that she has "...established that the non-prompt harmonisation of national law with the Directive has allowed the implementation for a long period of time of a deliberate practice of deporting...many third country nationals, who could have benefited from the provisions of the Directive due to their long term stay, in violation of the spirit and the purpose [of the Directive]" (Ombudsman Annual Report 2006, p. 92).

¹⁰⁵ Cyprus/ Aliens and Immigration Law, Cap. 105, as amended by law 8(I)/2007 (14.02.2007).

proposes the setting up of a three-member committee with the mandate of checking all the decisions of the Chief Immigration Officer which derive from the powers granted to him/her by the aforesaid law. The proposed committee will be presided over by a prosecutor from the Attorney General's office and will further comprise of two persons appointed by the Council of Ministers who have the qualifications to be appointed as district court judges. In his supporting statement, the MP referred to the necessity of setting up a review mechanism for the actions of the Chief Immigration Officer, stating that so far her actions are not subject to any review or check and on many occasions such actions have caused great human misery without valid cause. He also referred to the large number of unjustified deportations and generally to the cruel treatment to which many foreigners, particularly Arabs from countries friendly to Cyprus were being subjected to

Annex 1 - Tables and Statistics

The Equality Body was established in May 2004.

| | 2004 | 2005 | 2006 | 2007 |
|---|---------------|----------------------|-----------------|---------------|
| Budget of equality body for grounds of race or ethnic origin ¹⁰⁶ | Not available | 1.186.132 | 1.395.068 | 1.526.523 |
| Staff of equality body for grounds of race or ethnic origin ¹⁰⁷ | 4 part timers | 5 part timers | 6 part timers | 7 part timers |
| Procedures (investigations, audits etc.) initiated by equality body for grounds of race or ethnic origin at own initiative in cases of discrimination on the grounds of race or ethnic origin | 2 | 2 (both interrupted) | 1 (interrupted) | 1 |

¹⁰⁶ The budget figures are not only for the Equality Body but also for the Ombudsman, as the two bodies share premises, resources and personnel. There is no separate budget for the Equality Body.

¹⁰⁷ There are no members of staff working exclusively for the Equality Body, they are all working also for the Ombudsman. The figures presented here are the Equality Body's own estimate of the number of persons allocated to the Equality Body, as supplied to the researchers from an officer of the Equality Body.

| | | | | |
|--|---|--|---|---|
| Complaints on the grounds of race or ethnic origin received by equality body for grounds of race or ethnic origin ¹⁰⁸ | 61 received by Anti-discrimination authority 3 received by Equality Authority (employment field) | 141 received by Anti-discrimination authority 8 received by Equality Authority (employment field) | 105 received by Anti-discrimination authority 10 received by Equality Authority (employment field) | 157 received by Anti-discrimination authority 35 received by Equality Authority (employment field) |
| TOTAL | 64 | 149 | 115 | 192 |

¹⁰⁸ The Anti-discrimination Authority, one of the two departments comprising the Equality Body does not maintain statistical data per ground of discrimination. The figures inserted are those of the Anti-discrimination Authority, which deals with all grounds of discrimination beyond the field of employment. Given that the only ground where discrimination beyond employment is prohibited is race/ethnic origin, there is a strong possibility that the figures inserted concern only or at least mostly race/ethnic origin. Inserted here is also the number of complaints received by the Equality Authority, the other department comprising the Equality Body which deals only with discrimination in employment. The figures inserted represent the complaints received for discrimination in employment on the ground of race/ethnic origin.

| | | | | |
|--|---|---|---|---|
| Number of cases of racial or ethnic discrimination established by equality body for grounds of race or ethnic origin ¹⁰⁹ | No statistical data is maintained |
| Follow up activities of equality body, once problems were established (please disaggregate according to type of follow up activity: mediation, warning issued, opinion issued, sanction issued etc.) | No statistical data. Decisions are constantly monitored by the officer in charge who writes letters to the parties involved to check for compliance | No statistical data. Decisions are constantly monitored by the officer in charge who writes letters to the parties involved to check for compliance | No statistical data. Decisions are constantly monitored by the officer in charge who writes letters to the parties involved to check for compliance | No statistical data. Decisions are constantly monitored by the officer in charge who writes letters to the parties involved to check for compliance |
| Sanctions and/or compensation payments in cases of racial or ethnic discrimination (please disaggregate between court, equality body, other authorities or tribunals etc.) in your country (if possible, please disaggregate, as | No sanctions were imposed by the Equality Body No court decisions | No sanctions were imposed by the Equality Body No court decisions | No sanctions were imposed by the Equality Body No court decisions | No sanctions were imposed by the Equality Body No court decisions |

¹⁰⁹ The Equality Body does not classify data according to whether the complaint was found well-founded or groundless. Data is kept according to whether investigation was discontinued or not for whatever reason (including satisfaction of the claim), whether a complaint was deemed to be within or outside the Body's mandate and whether or not a report with recommendations was issued. The contents of such recommendations are not disaggregated.

| | | | | |
|---|--|--|--|--|
| far as possible, between sectors of society and economy) | | | | |
| Range of sanctions and/or compensation in your country (Please disaggregate according to type of sanction/compensation) | The Equality body imposed sanctions only in very rare cases, and none for race/ethnic origin | The Equality body imposed sanctions only in very rare cases, and none for race/ethnic origin | The Equality body imposed sanctions only in very rare cases, and none for race/ethnic origin | The Equality body imposed sanctions only in very rare cases, and none for race/ethnic origin |

Any other tables or statistics relevant for assessment of effectiveness of legislation addressing discrimination on the grounds of race or ethnic origin, where available

The national equality body, whose functions are carried out by the Ombudsman, consists of two departments: the Anti-discrimination Authority, which deals with all grounds beyond the field of employment, and the Equality Authority which deals with all grounds in the field of employment. The only data available from the Equality Body regarding the year 2008 concerns the number of complaints received and investigated by each authority, which however is not aggregated by ground of discrimination. Therefore, for the year 2008:

- The Anti-discrimination Authority received 241 complaints and examined 214. This last figure includes the backload of complaints which had been pending from previous years. Reports with recommendations were issued in 91 cases, 122 investigations were interrupted for various reasons and one complaint was deemed to be outside the Body's mandate. No fines or other sanctions were imposed.
- The Equality Authority received 93 complaints and investigated 95 (including the backload from previous years). Reports with recommendations were issued in 23 cases. Investigation was interrupted in 66 cases, whereas six complaints were deemed to be outside the Body's mandate. No fines or other sanctions were imposed.